in the Order Execution and Routing section under Equity 7 is in the public interest because it will provide Exchange members with the closest approximation of the fees and credits that they would have been eligible for if accurate data for August 12, 2019 were available and included in the monthly calculation.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would treat all market participants on the Exchange equally by excluding August 12, 2019 from all tier calculations described in Equity 7. Moreover, the Exchange believes that the proposed change would enhance competition between competing marketplaces by enabling the Exchange to fairly assess its members fees and to apply credits in light of systems issues that occurred, which are beyond the control of the Exchange.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Exchange begins the calculation and billing of member fees and credits in the Order Execution and Routing section under Equity 7 at the close of each month, and an operative delay would disrupt the normal billing process, which may cause expense and potential investor confusion. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–31 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2019–31. 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 website (*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 website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–31 and should be submitted on or before September 27, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–19222 Filed 9–5–19; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86841; File No. SR–NYSEArca–2019–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To Amend the Listing Rule Applicable to Shares of the Aware Ultra-Short Duration Enhanced Income ETF

August 30, 2019.

I. Introduction

On May 15, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''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

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

[2] 17 CFR 240.19b–4.

change to change the listing rule applicable to shares (''Shares'') of the Aware Ultra-Short Duration Enhanced In□come ETF (''Fund''), a series of the Tidal ETF Trust (''Trust''). The proposed rule change was published for comment in the **Federal Register** on June 4, 2019.[3] On July 8, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the Notice in its entirety.[4] On July 10, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended the proposed rule change as modified by Amendment No. 1.[5] On July 19, 2019, pursuant to Section 19(b)(2) of the Act,[6] the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[7] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendments No. 1 and No. 2.

II. Description of the Proposed Rule Change, as Modified by Amendments No. 1 and No. 2[8]

The Exchange states that the Shares commenced trading on the Exchange on January 29, 2019, pursuant to the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E, which govern Managed Fund Shares,[9] and that the Fund's investments comply with those requirements.[10] According to the Registration Statement,[11] the investment objective of the Fund is to seek to maximize current income while maintaining a portfolio consistent with the preservation of capital and daily liquidity.

The Exchange filed the proposed rule change to modify the listing rule applicable to the Shares. The Exchange proposes certain deviations from the generic requirements, which it states are necessary for the Fund to achieve its investment objective in a manner that is cost-effective and that maximizes investors' returns.[12]

A. The Fund's Permitted Investments

The Fund would seek to achieve its investment objective primarily by investing in ''Fixed Income Securities,'' which are: U.S. government securities; agency and non-agency asset-backed securities (''ABS'') and mortgage-backed securities (''MBS'') and collateralized mortgage obligations (''CMOs'');[13] floating or variable rate securities; collateralized bond obligations (''CBOs''), collateralized loan obligations (''CLOs'') and other collateralized debt obligations (''CDOs'' and, together with CBOs and CLOs, ''CDOs/CBOs/CLOs'');[14] corporate debt securities; municipal securities; inflation-indexed bonds; inflation-indexed securities issued by the U.S. Treasury; commercial paper (in addition to commercial paper that are cash equivalents);[15] convertible securities; and structured notes. In addition, the Fund could: (1) Hold cash and cash equivalents;[16] (2) enter into dollar rolls and short sales of Fixed Income Securities; (3) purchase securities and other instruments under when-issued, delayed delivery, to be announced or forward commitment transactions; (4) invest in private placements and Rule 144A securities; (5) hold U.S. and non-U.S. exchange-traded common stocks, preferred stocks, rights, warrants, exchange-traded notes (''ETNs''),[17] exchange-traded funds (''ETFs'');[18] and (6) hold securities of other investment companies,[19] subject to applicable limitations under Section 12(d)(1) of the 1940 Act. Further, the Fund could hold the following U.S. and non-U.S. exchange-listed and over-the-counter (''OTC'') derivative instruments: OTC foreign currency forwards; U.S. and non-U.S. exchange-listed futures and options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities or indices on the foregoing securities and financial instruments; and OTC options on stocks, Fixed Income Securities, interest rates, credit, currencies, commodities,

[3] *See* Securities Exchange Act Release No. 85955 (May 29, 2019), 84 FR 25863 (''Notice'').

[4] In Amendment No. 1, the Exchange: (1) Provided clarification regarding certain of the Fund's permitted investments; (2) changed certain citations supporting its proposals; (3) expanded upon an argument in support of one of its proposals and deleted an argument that had been offered in support of another proposal; (4) expanded certain representations regarding the Exchange's ability to obtain trading information regarding certain of the Fund's permitted investments; and (5) made other technical changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. The amendments to the proposed rule change are available at *https://www.sec.gov/comments/sr-nysearca-2019-38/srnysearca201938.htm.*

[5] In Amendment No. 2, the Exchange: (1) Modified the list of the Fund's permitted investments; and (2) made a technical change. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[6] 15 U.S.C. 78s(b)(2).

[7] *See* Securities Exchange Act Release No. 86414, 84 FR 35892 (July 25, 2019) (designating September 2, 2019, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change).

[8] For a complete description of the Exchange's proposal, *see* Notice, Amendments No. 1 and No. 2, *supra* notes 3, 4, and 5 respectively.

[9] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[10] *See* Amendment No. 1, *supra* note 4, at 4 n.3.

[11] On December 21, 2018, the Trust, which is registered under the 1940 Act, filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–227298 and 811–23377) (''Registration Statement''). The Exchange represents that the Trust will file an amendment to the Registration Statement as necessary to conform to the representations in the proposed rule change. *See id.,* n.5.

[12] *See id.* at 11.

[13] For purposes of this filing, non-agency ABS, non-agency MBS, and non-agency CMOs are referred to collectively herein as ''Private ABS/MBS.'' In the aggregate, Private ABS/MBS would not exceed more than 20% of the total assets of the Fund.

[14] For purposes of this filing, CDOs/CBOs/CLOs are excluded from the term Private ABS/MBS. CLOs are securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. CBOs are securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers. According to the Exchange, CDOs/CBOs/CLOs are distinguishable from Private ABS/MBS because they are collateralized by bank loans or by corporate or government fixed income securities and not by consumer and other loans made by non-bank lenders, including student loans. Collectively, CDOs, CBOs, and CLOs would not exceed more than 10% of the total assets of the Fund.

[15] *See infra* note 16.

[16] For purposes of this filing, cash equivalents are the short-term instruments enumerated in Commentary .01(c) to Rule 8.600–E.

[17] ETNs are securities as described in NYSE Arca Rule 5.2–E(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities).

[18] For purposes of this filing, ''ETFs'' are Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E); and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E). All ETFs would be listed and traded in the U.S. on a national securities exchange. According to the Exchange, while the Fund might invest in inverse ETFs, the Fund would not invest in leveraged (*e.g.,* 2X, -2X, 3X or -3X) ETFs.

[19] Investments in non-exchange-traded open-end management investment company securities would not exceed 20% of the total assets of the Fund.

or indices on the foregoing securities and financial instruments.[20]

B. Alternative Listing and Trading Criteria for the Shares

The Exchange represents that the Fund's portfolio satisfy all the generic listing requirements of Rule 8.600–E, except as discussed below.

The Fund proposes to invest in shares of non-exchange listed open-end management investment company securities. Such investments would not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E (U.S. Component Stocks) [21] because, according to the Exchange, it would be difficult or impossible to apply certain of the generic quantitative criteria (*e.g.,* market capitalization, trading volume, or portfolio criteria) applicable to U.S. Component Stocks to mutual fund shares.[22] The Fund's portfolio holdings in such investment company securities would be limited to 20% of the total assets of the Fund.[23]

The Exchange proposes that, instead of complying with the requirement of Commentary .01(b)(1) to NYSE Arca Rule 8.600–E,[24] the Fund's Fixed Income Securities—other than Private ABS/MBS and CDOs/CBOs/CLOs—that in the aggregate account for at least 50% of the fixed income weight of the portfolio each would have a minimum original principal amount outstanding of $50 million or more. As proposed, Private ABS/MBS, CDOs/CBOs/CLOs held by the Fund would not be subject to any minimum original principal amount outstanding requirement.

The Exchange proposes that the Fund's investments in Private ABS/MBS not be required to comply with Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[25] According to the Exchange, all other Fixed Income Securities, including the Fund's CDOs/CBOs/CLOs, would be subject to the criteria in Commentary .01(b)(4).

Additionally, the Exchange proposes that the Fund's investments not be required to comply with Commentary .01(b)(5) t NYSE Arca Rule 8.600–E.[26] As mentioned above, the Fund would instead invest up to 20% of its total assets in Private ABS/MBS and up to 10% of its total assets in CDOs/CBOs/CLOs.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act,[28] 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, 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.

According to the Exchange, the Shares would continue to satisfy the initial and continued listing criteria for Managed Fund Shares pursuant to NYSE Arca Rule 8.600–E, except for the requirements of Commentary .01(a)(1), (b)(1), (b)(4), and (b)(5).

As discussed above, the Fund will not meet the requirement in Commentary .01(b)(1) of NYSE Arca Rule 8.600–E that components that in the aggregate account for at least 75% of the fixed income weight of the portfolio shall each have a minimum original principal amount outstanding of $100 million or more. Instead, the Exchange proposes that components that, in the aggregate, account for at least 50% of the fixed income weight of the portfolio each shall have a minimum original principal amount outstanding of $50 million or more. Private ABS/MBS and CDOs/CBOs/CLOs would be excluded from this requirement and would not be subject to a requirement for a minimum original principal amount outstanding. The Exchange represents that at least 50% of the fixed income weight of the Fund's portfolio would still be required to have a substantial minimum original principal amount outstanding.[29] The Exchange asserts that not subjecting Private ABS/MBS and CDOs/CBOs/CLOs to a standard for minimum original principal amount outstanding would allow the Fund to invest in a larger variety of Private ABS/MBS and CDOs/CBOs/CLOs, which would help the Fund meet its investment objectives and diversify its holdings in such securities.[30]

Also as discussed above, the Fund, with respect to its investments in Private ABS/MBS, will not comply with the generic listing requirement that

[20] *See* Amendment No. 2, *supra* note 5.

[21] Commentary .01(a) to Rule 8.600–E specifies the equity securities accommodated by the generic criteria in Commentary .01(a). Commentary .01(a)(1) to Rule 8.600–E provides that the component stocks of the equity portion of a portfolio that are U.S. Component Stocks must meet the following criteria initially and on a continuing basis:

(A) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 90% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum market value of at least $75 million;

(B) Component stocks (excluding Derivative Securities Products and Index-Linked Securities) that in the aggregate account for at least 70% of the equity weight of the portfolio (excluding such Derivative Securities Products and Index-Linked Securities) each shall have a minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of $25,000,000, averaged over the last six months;

(C) The most heavily weighted component stock (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 30% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted component stocks (excluding Derivative Securities Products and Index-Linked Securities) shall not exceed 65% of the equity weight of the portfolio;

(D) Where the equity portion of the portfolio does not include Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 13 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares; and

(E) Except as provided herein, equity securities in the portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Securities Exchange Act of 1934.

[22] *See* Amendment No. 1, *supra* note 4, at 16.

[23] *See id.,* at 7.

[24] Commentary .01(b)(1) requires that fixed income securities portfolio components that in the aggregate account for at least 75% of the fixed income weight of the portfolio each have a minimum original principal amount outstanding of $100 million or more.

[25] Commentary .01(b)(4) provides that component securities that in the aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country. Unlike the Fund's Private ABS/MBS, the Fund's CDOs, CBOs, and CLOs would be subject to the criteria in Commentary .01(b)(4).

[26] Commentary .01(b)(5) requires that investments in non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities not account, in the aggregate, for more than 20% of the weight of the portfolio.

[27] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] *See* Amendment No. 1, *supra* note 4, at 11.

[30] *See id.* at 11–12.

securities comprising at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria in Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[31] The Exchange represents that, Fixed Income Securities, including CDOs/CBOs/CLOs, held by the Fund other than Private ABS/MBS, will continue to meet this requirement. The Exchange also represents that it will not invest more than 20% of the Fund's total assets in Private ABS/MBS. CDOs/CBOs/CLOs, which will meet the requirements of Commentary .01(b)(4), will be limited to 10% of the portfolio. The Exchange believes that this limitation will help the Fund maintain portfolio diversification and reduce manipulation risk.[32] The Commission notes that it has previously approved the listing of Managed Fund Shares that exclude Private ABS/MBS from the provisions of rules comparable to Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[33]

The Commission notes that CDOs/CBOs/CLOs will not be included in the definition of Private ABS/MBS and, as a result, will not be subject to the restriction on aggregate holdings of Private ABS/MBS set forth in Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, which limits investments in Private ABS/MBS to 20% of the weight of the portfolio. Instead, the Fund may invest up to 20% of the Fund in Private ABS/MBS and up to 10% of the fund's total assets in CDOs/CBOs/CLOs such that, in the aggregate, they may account for up to 30% of the weight of the Fund's portfolio. The Commission notes that it has previously approved similar limitations for Private ABS/MBS and CDOs/CBOs/CLOs.[34]

Finally, the Fund will not comply with the requirements of Commentary .01(a)(1)(A) through (E) to NYSE Arca Rule 8.600–E [35] in connection with the Fund's investments in non-exchange traded open-end investment company securities. The Exchange represents that investments in other non-exchange-traded open-end management investment company securities will not exceed 20% of the total assets of the Fund. The Exchange asserts that the criteria of Commentary .01(a)(1) does not need to apply to such securities because the securities must satisfy applicable 1940 Act diversification requirements, and the net asset value of the securities is based on the value of securities and financial assets the investment company holds.[36] The Commission notes that it has previously approved a similar proposal to invest in non-exchange-traded open-end management investment company securities.[37]

Other than as described above, the Fund's portfolio will continue to meet all the requirements of NYSE Arca Rule 8.600–E. The Commission believes that the proposed initial and continued listing requirements are designed to mitigate the potential for manipulation of the Shares, do not raise any novel issues, and are consistent with listing requirements of other Managed Fund Shares.[38]

The Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[39] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. Further, the Portfolio Indicative Value, as defined in NYSE Arca Rule 8.600–E(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session (defined in NYSE Arca Rule 7.34–E(a)(2)). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the Fund's website will include a form of prospectus for the Fund and additional data relating to the net asset value (''NAV'') and other applicable quantitative information.

Exchange-traded options quotation and last-sale information for options cleared via the Options Clearing Corporation are available via the Options Price Reporting Authority. Intra-day and closing price information regarding exchange-traded options will be available from the exchange on which such instruments are traded. Price information relating to OTC options and swaps will be available from major market data vendors. Intra-day price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. For exchange-traded common stocks, preferred stocks, rights, warrants, ETNs and ETFs, intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable). Intraday and other price information for the Fixed Income Securities in which the Fund invests will be available through subscription services, which can be accessed by authorized participants and other market participants. Additionally, the Trade Reporting and Compliance Engine (''TRACE'') of the Financial Industry Regulatory Authority (''FINRA'') will be a source of price information for corporate bonds, privately-issued securities, MBS and ABS, to the extent transactions in such securities are reported to TRACE.[40] Shares of money market funds are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors. Price information regarding U.S. government securities, repurchase agreements, reverse repurchase agreements and cash equivalents generally may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

The Commission also believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it has obtained a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio (as defined in

[31] *See supra* note 25.

[32] *See* Amendment No. 1, *supra* note 4, at 13.

[33] *See* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128); 85022 (January 31, 2019), 84 FR 2265 (February 6, 2019) (SR–NASDAQ–2018–080).

[34] *See id.*

[35] *See supra* note 21.

[36] *See* Amendment No. 1, *supra* note 4, at 23–24.

[37] *See, e.g.,* Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

[38] *See supra* notes 33, 34, and 37.

[39] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[40] Broker-dealers that are FINRA member firms have an obligation to report transactions in specified debt securities to TRACE to the extent required under applicable FINRA rules. Generally, such debt securities will have at issuance a maturity that exceeds one calendar year. For fixed income securities that are not reported to TRACE, (i) intraday price quotations will generally be available from broker-dealers and trading platforms (as applicable) and (ii) price information will be available from feeds from market data vendors, published or other public sources, or online information services, as described above.

NYSE Rule 8.600–E(c)(2)) will be made available to all market participants at the same time.[41] In addition, the Exchange states that on a daily basis, the Fund discloses on its website the Disclosed Portfolio of the Fund that forms the basis for the Fund's NAV calculation.[42] Trading in the Shares also will be subject to NYSE Arca Rule 8.600–E(d)(2)(D), which sets forth circumstances under which Shares of a fund may be halted. Further, trading in the Shares may be halted if the circuit breaker parameters in NYSE Arca Rule 7.12–E have been reached, because of market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[43]

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[44] Additionally, the Commission notes that 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.[45]

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.[46] In support of its proposal, the Exchange has made the following representations:

(1) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[47]

(2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.[48]

(3) The Exchange or FINRA, on behalf of the Exchange, or both, (1) will communicate as needed regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''); and (2) may obtain trading information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities.[49] The Exchange is able to access from FINRA, as needed, trade information for certain Fixed Income Securities held by the Fund reported to TRACE. FINRA also can access data obtained from the Municipal Securities Rulemaking Board relating to certain municipal bond trading activity for surveillance purposes in connection with trading in the Shares.[50]

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.[51]

(5) The Fund will be in compliance with Rule 10A–3 under the Act,[52] as provided by NYSE Arca Rule 5.3–E for initial and continued listing of shares.[53]

(6) All statements and representations made in the proposed rule change regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5(m)–E.[54]

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1 and No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Act[55] the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change (SR–NYSEArca-2019–38), as modified by Amendments No. 1 and No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

Jill M. Peterson,

Assistant Secretary.

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[41] *See* Amendment No. 1, *supra* note 4, at 20.

[42] *See id.* at 18.

[43] These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. *See id.*

[44] *See id.* at 20.

[45] *See* NYSE Arca Rule 8.600(d)(2)(B)(ii). The term ''Reporting Authority'' is defined in NYSE Arca Rule 8.600(c)(4).

[46] *See* Amendment No. 1, *supra* note 4, at 20.

[47] *See id.*

[48] *See id.*

[49] In addition, the Exchange may obtain information regarding trading in the Shares, ETFs, certain exchange-traded options and certain futures from such markets and other entities that are members of the ISG, or with which the Exchange has in place a comprehensive surveillance sharing agreement. *See* Amendment No. 2, *supra* note 5.

[50] *See id.* at 22.

[51] *See id.* at 20.

[52] 17 CFR 240.10A–3.

[53] *See* Amendment No. 1, *supra* note 4, at 20.

[54] *See id.* at 21.

[55] 15 U.S.C. 78f(b)(5).

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Extension:

Rule 302, SEC File No. 270–453, OMB Control No. 3235–0510.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (''Act'') (15 U.S.C. 78a *et seq.*).

Regulation ATS sets forth a regulatory regime for ''alternative trading systems'' (''ATSs''). An entity that meets the definition of an exchange must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act [1] or operate pursuant to an appropriate exemption.[2] One of the available exemptions is for ATSs.[3] Exchange Act

[1] *See* 15 U.S.C. 78e and 78f. A ''national securities exchange'' is an exchange registered as such under Section 6 of the Exchange Act.

[2] 15 U.S.C. 78a *et seq.*

[3] Rule 300(a) of Regulation ATS provides that an ATS is ''any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange