

### 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<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

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.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2014-140 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2014-140. 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2014-140, and should be submitted on or before January 20, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-73914; File No. SR-NYSEArca-2014-100]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to Listing and Trading of Shares of the SPDR SSGA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600

December 22, 2014.

#### I. Introduction

On September 5, 2014, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the SPDR SSGA Global Managed Volatility ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on September 24, 2014.<sup>3</sup> On November 4, 2014, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. This Order institutes proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposal

##### A. Generally

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares will be offered by SSGA Active ETF Trust ("Trust"), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.<sup>7</sup> SSGA Funds Management, Inc. will serve as the investment adviser to the Fund ("Adviser"). State Street Global Markets, LLC will be the principal underwriter and distributor of the Fund's Shares, and State Street Bank and Trust Company ("Custodian" or "Transfer Agent") will serve as administrator, custodian, and transfer agent for the Fund. The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer and has implemented a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund's portfolio.<sup>8</sup> The Exchange further represents that, in the event (a) the Adviser or any sub-

<sup>5</sup> See Securities Exchange Act Release No. 73515, 79 FR 66758 (Nov. 10, 2014). The Commission designated a longer period within which to take action on the proposed rule change and designated December 23, 2014, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). According to the Exchange, on September 20, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-173276 and 811-22542) ("Registration Statement"). In addition, the Exchange states that the Trust has obtained from the Commission certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 29524 (Dec. 13, 2010) (File No. 812-13487).

<sup>8</sup> Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition of or changes to the investment company portfolio.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 73141 (Sept. 18, 2014), 79 FR 57161 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser or any new adviser or sub-adviser, as the case may be, will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.<sup>9</sup>

### B. The Exchange's Description of the Fund

The statements made below are representations and assertions by the Exchange concerning the Fund.

#### 1. Principal Investment Policies

According to the Exchange, the Fund will seek to provide competitive, long-term returns while maintaining low, long-term volatility relative to the broad global market. Under normal circumstances,<sup>10</sup> the Fund will invest all of its assets in the SSgA Global Managed Volatility Portfolio ("Portfolio"), a separate series of the SSgA Master Trust with an identical investment objective as the Fund. As a

result, the Fund will invest indirectly through the Portfolio.

The Adviser will utilize a proprietary quantitative investment process to select a portfolio of exchange-listed and traded equity securities that the Adviser believes will exhibit low volatility and provide competitive, long-term returns relative to the broad global market.<sup>11</sup> The Portfolio will invest its assets in both U.S. and foreign investments. The Portfolio will generally invest at least 80% of its net assets in global equity securities and at least 30% of its net assets in global equity securities of issuers economically tied to countries other than the United States. The Portfolio will generally hold securities of issuers economically tied to at least three countries, including the United States. The Portfolio may purchase exchange-listed and traded common stocks and preferred securities of U.S. and foreign corporations.<sup>12</sup> The Adviser expects to favor securities with low exposure to market risk factors and low security-specific risk. The Adviser will consider market risk factors to include, among others, a security's size, momentum, value, liquidity, leverage, and growth. While the Adviser will attempt to manage the Fund's volatility exposure to stabilize performance, there can be no guarantee that the Fund will reach its target volatility. Additionally, the Adviser will implement risk constraints at the security, industry, size exposure, and sector levels. Through

this quantitative process of security selection and portfolio diversification, the Adviser expects that the Portfolio will be subject to a low level of absolute risk (as defined by standard deviation of returns) and thus should exhibit low volatility over the long term.

The Fund is intended to be managed in a "master-feeder" structure, under which the Fund will invest substantially all of its assets in the Portfolio (*i.e.*, a "master fund"), which is a separate 1940 Act-registered mutual fund that has an identical investment objective.<sup>13</sup> As a result, the Fund (*i.e.*, the "feeder fund") will have an indirect interest in all of the securities owned by the corresponding Portfolio. Because of this indirect interest, the Fund's investment returns should be the same as those of the Portfolio, adjusted for the expenses of the Fund. In extraordinary instances, the Fund reserves the right to make direct investments in securities.

The Adviser will manage the investments of the Portfolio. Under the master-feeder arrangement, and pursuant to the investment advisory agreement between the Adviser and the Trust, investment advisory fees charged at the Portfolio level will be deducted from the advisory fees charged at the Fund level. This arrangement avoids a "layering" of fees, *i.e.*, the Fund's total annual operating expenses would be no higher as a result of investing in a master-feeder arrangement than they would be if the Fund pursued its investment objectives directly. In addition, the Fund may discontinue investing through the master-feeder arrangement and pursue its investment objectives directly if the Fund's Board of Trustees ("Board") determines that doing so would be in the best interests of shareholders.

The exchange-listed and traded equity securities in which the Portfolio would be permitted to invest will be limited to: (1) equity securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG") or are parties to a comprehensive surveillance sharing agreement ("CSSA") with the Exchange; or (2) "Actively-Traded Securities" as defined

<sup>9</sup> The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>10</sup> The term "under normal circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>11</sup> Volatility is a statistical measurement of the magnitude of up and down fluctuations in the value of a financial instrument or index over time. Volatility may result in rapid and dramatic price swings.

<sup>12</sup> Investments in common stock of foreign corporations may also be in the form of American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs") and European Depositary Receipts ("EDRs") (collectively "Depositary Receipts"). Depositary Receipts are receipts, typically issued by a bank or trust company, which evidence ownership of underlying securities issued by a foreign corporation. For ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. For other Depositary Receipts, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. Depositary Receipts will not necessarily be denominated in the same currency as their underlying securities. Generally, ADRs, in registered form, are designed for use in the U.S. securities market, and EDRs, in bearer form, are designated for use in European securities markets. GDRs are tradable both in the United States and in Europe and are designed for use throughout the world. The Portfolio may invest in unsponsored Depositary Receipts. The issuers of unsponsored Depositary Receipts are not obligated to disclose material information in the United States, and, therefore, there may be less information available regarding such issuers and there may not be a correlation between such information and the market value of the Depositary Receipts. Unsponsored Depositary Receipts will not exceed 10% of the Fund's net assets.

<sup>13</sup> The Adviser represents that, in general, the Portfolio (*i.e.*, the master fund) will be where investments will be held and that these investments will primarily consist of equity securities and may, to a lesser extent, include other investments as described under "Non-Principal Investment Policies" below. The Fund (*i.e.*, the feeder fund) will invest in shares of the Portfolio and will not invest in investments described under "Non-Principal Investment Policies," but may be exposed to such investments by means of the Fund's investment in shares of the Portfolio. In extraordinary instances, the Fund reserves the right to make direct investments in equity securities and other investments.

in Regulation M (“Reg M”) under the Act that are traded on U.S. and non-U.S. exchanges with last sale reporting.<sup>14</sup>

The Portfolio and Fund do not intend to concentrate their investments in any particular industry. The Portfolio and Fund will look to the Global Industry Classification Standard (“GICS”) Level 3 (Industries) in making industry determinations.<sup>15</sup>

The Portfolio may invest in exchange-traded preferred securities. Preferred securities pay fixed or adjustable rate dividends to investors and have “preference” over common stock in the payment of dividends and the liquidation of a company’s assets.

## 2. Non-Principal Investment Policies

In certain situations or market conditions, in order to take temporary defensive positions, the Fund may (either directly or through the Portfolio) temporarily depart from its normal investment policies and strategies, provided that the alternative is consistent with the Fund’s investment objective and is in the best interest of the Fund. For example, the Fund may hold a higher than normal proportion of its assets in cash in times of extreme market stress.

According to the Registration Statement, in addition to the principal investments described above, the Portfolio may invest its remaining net assets in other investments, as described below. The investment practices of the Portfolio are the same in all material respects to those of the Fund.

The Portfolio may invest in U.S. Government obligations. U.S. Government obligations are a type of bond. U.S. Government obligations include securities issued or guaranteed as to principal and interest by the U.S. Government, its agencies, or instrumentalities.<sup>16</sup>

<sup>14</sup> The Exchange states that Rule 101 under Reg M defines Actively-Traded Securities as securities that have an average daily trading volume of at least \$1 million and are issued by an issuer whose common equity securities have a public float value of at least \$150 million. Rule 102 includes an analogous definition for actively-traded reference securities.

<sup>15</sup> GICS classifications can be found on the Standard & Poor’s Web site at <http://www.us.spindices.com/search/?query=gics+map>.

<sup>16</sup> One type of U.S. Government obligation, U.S. Treasury obligations, are backed by the full faith and credit of the U.S. Treasury and differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one-year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Other U.S. Government obligations are issued or guaranteed by agencies or instrumentalities of the U.S. Government including, but not limited to, the Federal National Mortgage Association, the Government National Mortgage

The Portfolio may purchase U.S. registered, dollar-denominated bonds of foreign corporations, governments, agencies, and supra-national entities.

The Portfolio may invest in restricted securities. Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to “qualified institutional buyers” under Rule 144A under the Securities Act. When Rule 144A restricted securities present an attractive investment opportunity and meet other selection criteria, the Portfolio may make such investments depending on the market that exists for the particular security. The Board has delegated to the Adviser the responsibility for determining the liquidity of Rule 144A restricted securities that the Portfolio may invest in.<sup>17</sup>

The Portfolio may conduct foreign currency transactions on a spot (*i.e.*, cash) or forward basis (*i.e.*, by entering into forward contracts to purchase or sell foreign currencies).

The Portfolio may invest in exchange-traded products (“ETPs”), including exchange-traded funds (“ETFs”) registered under the 1940 Act; exchange traded commodity trusts; and exchange-traded notes.<sup>18</sup>

Association (“Ginnie Mae”), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Mortgage Corporation, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation. Some obligations issued or guaranteed by U.S. Government agencies and instrumentalities, including, for example, Ginnie Mae pass-through certificates, are supported by the full faith and credit of the U.S. Treasury.

<sup>17</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>18</sup> For purposes of this filing, ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The Portfolio may invest in ETFs managed by the Adviser. The Adviser may receive management or other fees from the ETPs in which the Portfolio or

In addition, the Portfolio may invest in the securities of other investment companies, including money market funds and exchange-traded closed-end funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.<sup>19</sup> The Portfolio may invest up to 25% of its total assets in one or more ETPs that are qualified publicly traded partnerships (“QPTPs”) and whose principal activities are the buying and selling of commodities or options, futures, or forwards with respect to commodities.<sup>20</sup> A QPTP is an entity that is treated as a partnership for federal income tax purposes, subject to certain requirements. If such an ETP fails to qualify as a QPTP, the income generated from the Portfolio’s investment in the ETP may not comply with certain income tests necessary for the Portfolio to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code.

The Portfolio may invest in exchange-traded shares of real estate investment trusts (“REITs”).

The Portfolio may invest in repurchase agreements with commercial banks, brokers, or dealers to generate income from its excess cash balances and to invest securities lending cash collateral. A repurchase agreement is an agreement under which a fund acquires

Fund may invest, as well as a management fee for managing the Fund. The ETPs all will be listed and traded in the U.S. on national securities exchanges.

<sup>19</sup> The Fund will invest substantially all of its assets in the Portfolio. The Exchange states that, pursuant to Section 12(d)(1) of the 1940 Act, a fund may invest in the securities of another investment company (the “acquired company”) provided that the fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) More than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the fund; (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the fund) having an aggregate value in excess of 10% of the value of the total assets of the fund; or (iv) in the case of investment in a closed-end fund, more than 10% of the total outstanding voting stock of the acquired company. The Fund may also invest in the securities of other investment companies if such securities are the only investment securities held by the Fund, such as through a master-feeder arrangement. The Fund currently will pursue its investment objective through such an arrangement. To the extent allowed by law, regulation, the Fund’s investment restrictions, and the Trust’s exemptive relief, the Fund may invest its assets in securities of investment companies that are money market funds, including those advised by the Adviser or otherwise affiliated with the Adviser, in excess of the limits discussed above.

<sup>20</sup> Examples of such entities are the PowerShares DB Energy Fund, PowerShares DB Oil Fund, PowerShares DB Precious Metals Fund, PowerShares DB Gold Fund, PowerShares DB Silver Fund, PowerShares DB Base Metals Fund, and PowerShares DB Agriculture Fund, which are listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 8.200.

a financial instrument (e.g., a security issued by the U.S. government or an agency thereof, a banker's acceptance, or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. The resale price reflects an agreed upon interest rate effective for the period the instrument is held by a fund and is unrelated to the interest rate on the underlying instrument.

The Portfolio may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date. Generally, the effect of such transactions is that a fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while in many cases a fund is able to keep some of the interest income associated with those securities.

In addition to repurchase agreements, the Portfolio may invest in short-term instruments, including money market instruments, (including money market funds advised by the Adviser), cash, and cash equivalents, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds; (ii) obligations issued or guaranteed by the U.S. government, its agencies, or its instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit, bankers' acceptances, fixed time deposits, and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase "Prime-1" by Moody's or "A-1" by Standard & Poor's, or if unrated, of comparable quality as determined by the Adviser;<sup>21</sup> (v) non-convertible corporate debt securities (e.g., bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a-7 under the 1940 Act;

<sup>21</sup> Commercial paper consists of short-term, promissory notes issued by banks, corporations, and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing.

(vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by the Portfolio; and (vii) variable rate demand notes.

### 3. Investment Restrictions

According to the Registration Statement, the Portfolio and the Fund will be classified as a "non-diversified" investment company under the 1940 Act.<sup>22</sup> A non-diversified classification means that the Portfolio or Fund is not limited by the 1940 Act with regard to the percentage of its assets that may be invested in the securities of a single issuer. This means that the Portfolio or Fund may invest a greater portion of its assets in the securities of a single issuer than a diversified fund. Although the Portfolio and Fund will be non-diversified for purposes of the 1940 Act, the Portfolio and Fund intend to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a "regulated investment company" for purposes of the Internal Revenue Code of 1986.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Neither the Fund nor the Portfolio will invest in options, futures contracts, or swaps agreements. The Fund's and Portfolio's investments will be consistent with its investment objective and will not be used to enhance leverage.

### 4. Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances,

<sup>22</sup> A "non-diversified company," as defined in Section 5(b)(2) of the 1940 Act, means any management company other than a diversified company (as defined in Section 5(b)(1) of the 1940 Act).

administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>23</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, ETPs, and certain exchange-traded securities underlying the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>24</sup> FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine.

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

### 5. Information Sharing Procedures

In the proposal, the Exchange states that the Commission requires that, in designing a new derivative securities product, the self-regulatory organization ("SRO") determine that it has adequate

<sup>23</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>24</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

information sharing procedures to detect and deter potential trading abuses,<sup>25</sup> and the Exchange further states that in many, but not all, cases, this requirement is met through listing standards that require the securities underlying a new derivatives securities product to be listed on markets that are members of the ISG or with which the Exchange has a CSSA. For example, the generic listing standards for options on closed-end funds holding foreign stocks, options on foreign index ETFs, and foreign index options require information sharing agreements for the underlying index or portfolio securities.<sup>26</sup> Similarly, the listing standards for stock index warrants contain a specific limitation on the percentage of foreign country securities that are not traded on markets that are not subject to CSSAs.<sup>27</sup>

<sup>25</sup> See, e.g., Securities Exchange Act Release No. 40761 (Dec. 8, 1998) (S7-13-98) (“New Products Release”). The New Products Release was adopted in 1998 to expand the scope of SRO matters that do not constitute proposed rule changes in response to the need for flexibility in regulating new derivative securities products by developing streamlined filing procedures to ease the SROs’ regulatory burdens in many circumstances.

<sup>26</sup> See, e.g., NYSE Arca Options Rule 5.3(e) (options on international closed end funds) (requiring the Exchange to have a market information sharing agreement with the primary exchange for each of the securities held by the fund or that such fund be classified as a diversified fund under Section 5(b) of the 1940 Act and that securities of the fund be issued by issuers in five or more countries); NYSE Arca Options Rule 5.3(g) (options on ETFs) (requiring that non-U.S. component securities of the underlying index or portfolio that are not subject to CSSAs not, in the aggregate, represent more than 50% of the weight of the index or portfolio; that component securities for which the primary market is in any one country that is not subject to a CSSA not represent 20% or more of the index weight; and that component securities for which the primary market is in any two countries not subject to CSSAs not represent 33% or more of the index weight); NYSE Arca Options Rule 5.12 (requiring that non-U.S. component securities of the index not subject to CSSAs not, in the aggregate, represent more than 20% of the index weight).

<sup>27</sup> See, e.g., NYSE Arca Equities Rule 8.3 (a)(7) (Listing of Currency and Index Warrants) (Foreign Country Securities or American Depository Receipts thereon that: (A) Are not subject to a comprehensive surveillance agreement, and (B) have less than 50% of their global trading volume (in dollar value) within the United States, shall not, in the aggregate, represent more than 20% of the weight of the index, unless such index is otherwise approved for warrant or option trading). See, e.g., Securities Exchange Act Release Nos. 31121 (Aug. 28, 1992) (SR-PSE-92-09 and SR-PSE-92-10) (order granting accelerated approval of proposed rule changes relating to listing index warrants based on the FT-SE Eurotrack 200 Index and the Eurotop 100 Index); 30462 (Mar. 11, 1992) (SR-Amex 91-10, SR-NYSE-91-13, SR-CBOE-91-09, SR-CBOE-91-13) (order approving proposed rule changes relating to listing of index options and index warrants based on the FT-SE Eurotrack 200 Index); 28544 (Oct. 17, 1990) (SR-Amex-90-08; SR-NYSE-90-36; SR-PHLX-90-25; SR-PSE-90-18) (order approving proposed rule changes relating to the listing of index warrants based on the CAC-40 Index).

However, the Exchange points out that the generic listing standards for ETFs based on foreign indexes in NYSE Arca Equities Rule 5.2(j)(3) (Investment Company Units), and for closed-end funds holding foreign securities, do not include specific CSSA requirements.<sup>28</sup> Additionally, the Exchange argues that the American Stock Exchange and the New York Stock Exchange have proposed, and the Commission has approved, the listing or trading pursuant to unlisted trading privileges of shares of many foreign-index-based ETFs that hold securities listed and traded on markets with which the ETF-listing exchange did not have CSSAs.<sup>29</sup>

The Exchange believes that its ability to monitor trading in the Fund would not be impacted by the absence of CSSAs with, or ISG membership of, markets on which “Actively-Traded Securities” (as defined in Rule 101(c)(1) of Reg M)<sup>30</sup> are listed or traded. The Exchange states that many established and reputable markets are not members of ISG.<sup>31</sup> The Exchange asserts that such markets have price transparency, regulatory surveillance, liquidity, and last-sale information, as well as

<sup>28</sup> See, e.g., Securities Exchange Act Release No. 54739 (Nov. 9, 2006) (SR-Amex-2006-78) (stating that CSSAs are not required in connection with listing of ETFs under the generic listing criteria of American Stock Exchange Rule 1000A given that the generic listing criteria otherwise require minimum levels of liquidity, concentration, and pricing transparency for index components).

<sup>29</sup> See, e.g., Securities Exchange Act Release Nos. 42748 (May 2, 2000), 65 FR 30155 (May 10, 2000) (SR-Amex-98-49) (order approving listing and trading of six series of World Equity Benchmark Shares based on foreign stock indexes); 42786 (May 15, 2000), 65 FR 33586 (May 24, 2000) (SR-Amex-99-49) (order partially approving listing and trading of series of the iShares Trust based on foreign stock indexes); 44900 (Oct. 25, 2001), 66 FR 55712 (Nov. 2, 2001) (SR-Amex-2001-45) (order approving listing and trading of seven series of funds of iShares, Inc. based on foreign indexes); 36947 (Mar. 8, 1996) (SR-Amex-95-43) (order approving listing of Index Fund Shares based on 18 foreign indexes); 52178 (July 29, 2005) (SR-NYSE-2005-41) (order approving listing of iShares MSCI EAFE Growth and iShares MSCI EAFE Value Funds); 52816 (Nov. 21, 2005) (SR-NYSE-2005-70) (order approving listing of iShares MSCI Index Funds). A list of ISG members is available at <https://www.isgportal.org/isgPortal/public/members.htm>.

<sup>30</sup> 17 CFR 242.101(c)(1).

<sup>31</sup> Non-ISG member exchanges include: Abu Dhabi Securities Exchange; Athens Exchange; BM&FBOVESPA S.A.; BME Spanish Exchanges; Bolsa Mexicana de Valores; Bourse de Luxembourg; Deutsche Börse AG; Euronext Brussels N.V./S.A.; Euronext Lisbon—Sociedade Gestora de Mercados Regulamentados, S.A.; Euronext Paris S.A.; Indonesia Stock Exchange; Irish Stock Exchange; Johannesburg Stock Exchange; Moscow Exchange; Philippine Stock Exchange; Saudi Stock Exchange; Shanghai Futures Exchange; Shenzhen Stock Exchange; SIX Swiss Exchange; Stock Exchange of Thailand; Taiwan Futures Exchange; Taiwan Stock Exchange; Tel-Aviv Stock Exchange; The Egyptian Exchange; Wiener Börse AG; and Zhengzhou Commodity Exchange.

numerous other regulatory requirements traditionally associated with national securities exchanges in the United States. However, the Exchange notes that, at times, local laws, such as privacy laws in certain European nations, preclude markets from becoming ISG members or would result in any CSSA entered into being severely limited with respect to the information that can be shared. The Exchange further notes that, while some exchanges in the European Union may not be ISG members, those exchanges have the obligation to share trading data with their national regulator, and these national regulators are parties to sharing agreements with each other. Therefore, while there may be instances where the exchanges in the European Union may not directly share trading data, the Exchange argues that regulators may share information with each other when necessary, to deter and detect market manipulation.

The Exchange further states that, as the global marketplace has evolved and become more interconnected, an issuer’s securities may be traded on multiple markets. For example, thanks to harmonized European legislation, and, in particular, the Prospectus Directive of the Markets in Financial Instruments Directive (“MiFID”),<sup>32</sup> issuers wishing to raise capital in the European Union may take advantage of “passporting” their prospectus, which allows an issuer to use one prospectus and raise capital across the European Economic Area (EEA).<sup>33</sup> The Exchange notes that one of the consequences of this single prospectus is that an issuer’s securities can and often do trade across several markets in the EEA, some of which may be ISG members and others may not.

Additionally, MiFID, introduced in 2007, contains a transaction reporting requirement, under which various markets and trading firms are required to submit transaction reports to an “Approved Reporting Mechanism.” MiFID also makes it possible for any transferable security that has been admitted to trading on a regulated market of an “EU Member State” to be admitted to trading on other Member States’ regulated markets or on any other trading venues. As a result, it is difficult to predict where the liquidity in any particular security will primarily

<sup>32</sup> Information regarding the Prospectus Directive is available from the European Commission at [http://ec.europa.eu/internal\\_market/securities/prospectus/index\\_en.htm](http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm).

<sup>33</sup> See The Forum of European Securities Commissions [FESCO], A “European Passport” For Issuers at 4-8, Fesco/99-098e (May 10, 2000), available at [http://www.esma.europa.eu/system/files/99\\_098e.PDF](http://www.esma.europa.eu/system/files/99_098e.PDF).

reside. Moreover, the MiFID best execution requirement<sup>34</sup> may require an executing broker to trade on markets that are not ISG members. The Exchange argues that these developments would make it challenging for the Fund to limit the trading of foreign securities on markets that are members of ISG or with which the Exchange has a CSSA.

In addition, the Exchange believes that it is not necessary to its ability to detect and deter manipulation in Shares of the Fund for equity securities in which the Fund invests to be listed and traded on markets that are members of ISG or with which the Exchange has a CSSA, provided that such equity securities are Actively-Traded Securities. As the Commission noted in adopting Reg M, Actively-Traded Securities are less likely to be manipulated because the costs of such manipulation is high, aberrations in price are more likely to be discovered and quickly corrected, and such securities are generally traded on markets with high levels of transparency and surveillance. For this reason, the Exchange asserts that Actively-Traded Securities were excepted from the prophylactic provisions of Rule 101 of Reg M<sup>35</sup> and, thus, would not be subject to the restrictions imposed upon distribution participants or issuers and selling security holders during the restricted period, as those terms are defined in Reg M.

The Exchange argues that, as the Commission recognized in adopting Reg M, the detection of manipulation of Actively-Traded Securities is aided substantially by the widespread coverage by analysts, news outlets, investors, and other market participants around the world of these securities.<sup>36</sup>

<sup>34</sup> See generally The Committee of European Securities Regulators (CESR), *Best Execution Under MiFID: Questions and Answers*, CESR/07-320 (May 2007), available at [http://www.cvm.pt/CMVM/Cooperacao%20Internacional/Docs\\_ESMA\\_Cesr/Documents/07\\_320.pdf](http://www.cvm.pt/CMVM/Cooperacao%20Internacional/Docs_ESMA_Cesr/Documents/07_320.pdf) (MiFID's best execution regime requires investment firms to take all reasonable steps to obtain the best possible result for their clients, taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to order execution. CESR considers this requirement to be of a general and overarching nature.); see also The Committee of European Securities Regulators (CESR), *Best Execution Under MiFID: Public Consultation*, CESR/07-050b (Feb. 2007), available at [http://www.esma.europa.eu/system/files/07\\_050b.pdf](http://www.esma.europa.eu/system/files/07_050b.pdf); Financial Services Authority (FSA), *Implementing MiFID's Best Execution Requirement* (May 2006), available at [http://www.fsa.gov.uk/pubs/discussion/dp06\\_03.pdf](http://www.fsa.gov.uk/pubs/discussion/dp06_03.pdf).

<sup>35</sup> Rule 102 similarly excepts from its provisions actively-traded reference securities.

<sup>36</sup> See Release Nos. 33-7375; 34-38067; IC 22412; International Series Release Nos. 1039; File No. S7-11-96, 62 FR 520 (Jan. 3, 1997) (Anti-manipulation Rules concerning Securities Offerings), at 62 FR 527.

This close scrutiny and increased transparency of the secondary markets means that unusual market activity is likely to be observed and quickly corrected.

Further, that Exchange argues that, as also noted by the Commission in adopting Reg M, because the costs associated with manipulating an Actively-Traded Security will be higher, the likelihood of manipulation of Actively-Traded Securities is low. This potential for improper activity in an Actively-Traded Security to be used to manipulate, or otherwise impact, trading in the Shares of the Fund is further diluted by the fact that a single Actively-Traded Security represents only part of the value of the Fund. This limited impact is guaranteed by diversification requirements applicable to the Fund in the Exchange's listing rules and the Internal Revenue Code, which requires certain diversification to qualify as a regulated investment company ("RIC").<sup>37</sup>

The Exchange also notes that other provisions of the securities laws encourage disparate treatment for active, large capitalization securities. In its no action letter<sup>38</sup> to FINRA in 2012 regarding Rule 15c3-1 under the Act ("Net Capital Rule"),<sup>39</sup> the Commission expanded the universe of foreign equity securities that were deemed to have a ready market.<sup>40</sup> Similar to the exemptions afforded Actively-Traded Securities, the beneficial attributes of liquidity and size were once again acknowledged and formed the basis for the Commission's interpretation of this

<sup>37</sup> See 26 U.S.C. 851.

<sup>38</sup> See Letter from Michael A. Macchiaroli, Associate Director, Division of Trading and Markets ("Division"), Commission, to Grace B. Vogel, Executive Vice President, FINRA (November 28, 2012) (the "Ready Market No-Action Letter") available at <http://www.sec.gov/divisions/marketreg/mr-noaction/2012/finra-112812.pdf>.

<sup>39</sup> The primary purpose of the Net Capital Rule is to protect customers and other market participants from broker-dealer failures by ensuring that broker-dealers maintain sufficient liquid assets to satisfy their liabilities and to provide a cushion in excess of liabilities to cover select risks in the event of liquidation. The Net Capital Rule enhances investor/customer confidence in the financial integrity of broker-dealers and the securities market.

<sup>40</sup> Paragraph (c)(11)(i) of the Net Capital Rule states that the term "ready market" shall include "a market in which there exists independent bona fide offers to buy and sell so that a price reasonably related to the last sales price or current bona fide competitive bid and offer quotations can be determined for a particular security almost instantaneously and where payment will be received in settlement of a sale at such price within a relatively short time conforming to trade custom." The ready market designation implies that for the purposes of broker-dealer net capital calculations, securities with such a designation held by the broker-dealer would be subject to a 15% haircut as opposed to a 100% haircut for non-marketable securities.

fundamental customer protection provision of the securities laws.<sup>41</sup>

The Exchange asserts that permitting the Fund to invest in Actively-Traded Securities, even if they trade on markets that are not member of ISG, will allow investors to benefit from the Fund's portfolio managers' expertise as well as potentially reducing costs to shareholders. In addition, the Exchange asserts that investing directly in Actively-Traded Securities would, in many cases, be a less expensive alternative than other investments used by the Fund's portfolio managers when they are restricted to trading in markets that are members of ISG or with which the Exchange has a CSSA. For example, investing in international index ETFs<sup>42</sup> is a common way fund managers provide investors with exposure to regions whose markets are not members of ISG. These international index ETFs can be a less efficient and less targeted proxy for direct investment in foreign security components of those indexes. The fees imbedded in such ETFs would be borne directly by a fund and indirectly by investors in shares of a fund. Thus, the Exchange concludes that the ability of the Fund to directly invest in Actively-Traded Securities listed or traded on markets that may not be members of ISG or with which the Exchange has a CSSA would be a less expensive alternative for the Fund's portfolio managers, which lower costs to the benefit of shareholders of the Fund.

<sup>41</sup> In the Ready Market No Action Letter, the Division stated that it would not recommend enforcement action to the Commission if a broker-dealer treats an equity security of a foreign issuer as having a ready market under Rule 15c3-1(c)(11) and subject to haircuts under paragraph (c)(2)(vi)(I), if the following conditions are met: (1) The security is listed for trading on a foreign securities exchange located within a country that is recognized on the FTSE World Index, where the security has been trading on that exchange for at least the previous 90 days; (2) Daily quotations for both bid and ask or last sale prices for security provided by the foreign securities exchange on which the security is traded are continuously available to broker-dealers in the United States, through an electronic quotation system; (3) The median daily trading volume (calculated over the preceding 20 business day period) of the foreign equity security on the foreign securities exchange on which the security is traded is either at least 100,000 shares or \$500,000; and (4) The aggregate unrestricted market capitalization in shares of such security exceeds \$500 million over each of the preceding 10 business days.

<sup>42</sup> As noted above, international index ETFs are listed under NYSE Arca Equities Rule 5.2(j)(3), which does not include a requirement that index components trade on markets that are members of ISG or with which the Exchange has a CSSA.

### III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2014–100 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>43</sup> 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, as discussed below. 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,<sup>44</sup> 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."<sup>45</sup>

As discussed above, as part of the Fund's principal investment strategy, the exchange-listed and traded equity securities in which the Portfolio would be permitted to invest would include "Actively-Traded Securities," as defined in Reg M under the Act, that are traded on U.S. and non-U.S. exchanges with last sale reporting.<sup>46</sup> The proposed rule change would permit the listing and trading of an actively managed ETF based on a portfolio of equity securities that may trade on exchanges or markets that are neither members of ISG nor parties to a CSSA with the Exchange, and the Commission believes that proceedings are appropriate to consider, among other matters, whether the Exchange would be able to obtain the information necessary to detect and deter market manipulation, illegal trading, and other abuses involving the new derivative securities product, including trading in the new derivative securities product and its underlying securities.

<sup>43</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>44</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>45</sup> 15 U.S.C. 78f(b)(5).

<sup>46</sup> See *supra* note 14.

### IV. 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.<sup>47</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by January 20, 2015. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 3, 2015.

The Commission asks that commenters address the sufficiency of the Exchange's statements in the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the statements of the Exchange contained in the Notice,<sup>48</sup> including the statements made in connection with information sharing procedures with respect to certain non-U.S. equity security holdings, the Exchange's arguments regarding the applicability of the definition of "Actively-Traded Securities" under Reg M with respect to the securities in which an ETF may invest, and any other issues raised by the proposed rule change.

Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–

<sup>47</sup> 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).

<sup>48</sup> See Notice, *supra* note 3.

NYSEArca–2014–100 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–2014–100. 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–2014–100 and should be submitted on or before January 20, 2015. Rebuttal comments should be submitted by February 3, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>49</sup>

**Brent J. Fields,**

Secretary.

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<sup>49</sup> 17 CFR 200.30–3(a)(57).