

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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>49</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder<sup>50</sup> because it establishes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may 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 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-97 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2010-97. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>51</sup> 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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2010-97 and should be submitted on or before December 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63292; File No. SR-NYSEArca-2010-98]

#### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the WisdomTree Managed Futures Strategy Fund

November 9, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on November 1, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca" or "Corporation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the shares of the following fund of the WisdomTree Trust ("Trust") under

NYSE Arca Equities Rule 8.600: WisdomTree Managed Futures Strategy Fund ("Fund"). The shares of the Fund are collectively referred to herein as the "Shares."<sup>3</sup> The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

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

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

##### 1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of "Managed Fund Shares" on the Exchange.<sup>5</sup>

<sup>3</sup> See Form 19b-4 Information of the proposed rule change at 3.

<sup>4</sup> NYSE Arca Equities Rule 8.600(c)(1) provides that, among other criteria, 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) ("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 Equities Rule 5.2(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.

<sup>5</sup> The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain shares of the PowerShares Actively Managed Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25). The Commission also previously approved listing and trading on the Exchange of Managed Fund Shares under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF

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<sup>49</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>50</sup> 17 CFR 240.19b-4(f)(2).

<sup>51</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov/rules/sro.shtml>.

<sup>52</sup> 17 CFR 200.30-3(a)(12).

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

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

The Fund will be an actively managed exchange-traded fund. WisdomTree Asset Management, Inc. ("WisdomTree Asset Management") is the investment adviser ("Adviser") to the Fund. WisdomTree Investments, Inc. ("WisdomTree Investments") is the parent company of WisdomTree Asset Management. Mellon Capital Management Corporation ("Mellon" or "Sub-Adviser") serves as the sub-adviser for the Fund. The Bank of New York Mellon is the administrator, custodian and transfer agent for the Fund. ALPS Distributors, Inc. serves as distributor for the Fund. The Shares will be offered by the Trust, which is registered with the Commission as an investment company.<sup>6</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 and/or changes to such Investment Company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.<sup>7</sup> Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects

the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. WisdomTree Asset Management is not affiliated with any broker-dealer. Mellon is affiliated with multiple broker-dealers and has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.<sup>8</sup> In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.

*Description of the Shares, the Benchmark and the Fund:*

According to the Registration Statement, the WisdomTree Managed Futures Strategy Fund seeks to provide investors with positive total returns in rising or falling markets that are not directly correlated to broad market equity or fixed income returns. The Fund is managed using a quantitative, rules-based strategy designed to provide returns that correspond to the performance of the Diversified Trends Indicator™ ("Benchmark"). The Benchmark is a widely used indicator designed to capture the economic benefit derived from rising or declining

price trends in the commodity, currency and U.S. Treasury futures markets.

*The Benchmark:*

The Benchmark is a rules-based indicator designed to capture rising and falling price trends in the commodity, currency and U.S. Treasury markets through long and short positions on U.S. listed futures contracts. The Benchmark consists of U.S. listed futures contracts on 16 tangible commodities and 8 financial futures. The 16 commodity futures contracts are: light crude oil, natural gas, RBOB gas, heating oil, soybeans, corn, wheat, gold, silver, copper, live cattle, lean hogs, coffee, cocoa, cotton and sugar. The 8 financial futures contracts are: the Australian dollar, British pound, Canadian dollar, Euro, Japanese yen, Swiss franc, U.S. Treasury Notes and U.S. Treasury bonds. Each contract is sometimes referred to as a "Component" of the Benchmark.

Components that are similar in nature (such as gas and oil or gold and silver) are aggregated into "Sectors." There are nine commodity Sectors in the Benchmark: Energy, Grains, Precious Metals, Industrial Metals, Livestock, Coffee, Cocoa, Cotton, and Sugar. Each financial futures contract is considered to be its own Sector. As a result, there are eight financial Sectors in the Benchmark: The Australian dollar, British pound, Canadian dollar, Euro, Japanese yen, Swiss franc, U.S. Treasury Notes and U.S. Treasury bonds.

In order to capture both rising and falling price trends, at the end of each month each Sector in the Benchmark (other than the Energy Sector) is positioned as either "long" or "short" (at the end of each month, the Energy Sector is positioned as either "long" or "flat" (*i.e.*, no exposure)). This determination is made using an algorithm that compares the Sector's monthly return to the Sector's historic weighted moving average returns. If the Sector's returns are above its moving average returns the Sector is positioned as "long" throughout the following month. If the Sector's returns are below its moving average the Sector is positioned as "short" throughout the following month (with the sole exception of the Energy Sector, which would be positioned as "flat"). All Components within a Sector are held in the same direction. The value of a Sector and the value of the Benchmark should increase if a long position increases in value or if a short position decreases in value. For example, if a Sector is long in the Benchmark and the value of its Components goes up intra-month, the return of the Sector (and therefore the Benchmark) should

Trust); 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR-NYSEArca 2010-04) (order approving listing and trading of WisdomTree Real Return Fund); and 62604 (June [sic] 30, 2010), 75 FR 47323 (August 5, 2010) (SR-NYSEArca-2010-49) (order approving listing and trading of the WisdomTree Emerging Markets Local Debt Fund).

<sup>6</sup> See Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on July 22, 2010 (File Nos. 333-132380 and 811-21864) ("Registration Statement"). The Registration Statement became effective on September 20, 2010. The descriptions of the Fund and the Shares contained herein are based on information in the Registration Statement.

<sup>7</sup> 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 Sub-Adviser 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.

<sup>8</sup> The Exchange represents that the Adviser and the Sub-Adviser and their related personnel are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment adviser to include, at a minimum: (i) Standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment adviser to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. 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.

increase. If a Sector is short in the Benchmark, and the value of its Components goes down intra-month, the return of the Sector (and therefore the Benchmark) should increase.

The Energy Sector and its Components may never be positioned short within the Benchmark. The Benchmark's methodology provides that, due to significant levels of continuous consumption, limited reserves and other factors, the Energy Sector can only be long or flat (*i.e.*, no exposure) within the Benchmark. If the Energy Sector is flat then the weighting of the other Sectors and Components within the Benchmark is increased on a pro-rata basis.<sup>9</sup> As a result, when the Energy Sector is flat, financial futures will represent approximately 61.5% of the weight of the Benchmark and commodities will represent approximately 38.5% of the weight of the Benchmark. When the Energy Sector is long, financial futures and commodity futures each represent 50% of the weight of the Benchmark.

At the beginning of each year and month, the Benchmark is weighted in one of two ways. If the Energy Sector is long, the Benchmark is weighted evenly (*i.e.*, 50/50) between commodity futures contracts and financial futures contracts. If the Energy Sector is flat, financial futures represent approximately 61.5% of the weight of the Benchmark and commodity futures represent approximately 38.5% of the Benchmark. At the beginning of 2010, the Benchmark was weighted evenly: A 50% weight to commodity futures and a 50% weight to financial futures. At the beginning of each year, each Component and Sector also has a "Base Weight," depending on whether the Energy Sector is long or flat. If the Energy Sector is flat, then the Base Weight of the other Sectors and Components within the Benchmark is increased on a pro-rata basis. Commodity Sector weights are based on, but not exactly proportional to, historical world production levels. Commodity Sectors that have higher historical production levels are weighted higher in the Benchmark. Weightings of the financial futures Sectors are based on, but not directly proportional to, historical gross domestic product ("GDP"). Larger economic regions (*i.e.*, Europe as measured by the Euro) should get a higher weighting than smaller regions

(*i.e.*, Australia as measured by the Australian dollar).<sup>10</sup>

The weight of each Component and Sector in the Benchmark changes throughout each month based upon performance. At the end of each month, each Sector is reset back to its applicable Base Weight depending on whether the Energy Sector is long or flat. Within Sectors that have multiple Components, the weight of each Component relative to the others is allowed to fluctuate throughout the year and Component weights are reset back to their respective Base Weights only at year-end.

#### *The Fund:*

The Fund will invest substantially all of its assets in a combination of commodity- and currency-linked investments (including investments linked to U.S. Treasuries) designed to correspond to the performance of the Benchmark, and U.S. government securities (as defined in Section 3(a)(42) of the Exchange Act) ("Government Securities") that serve as collateral or otherwise back the commodity- and currency-linked investments. More specifically, the Fund will invest at least 70% of its assets in a combination of: (i) Listed commodity and financial futures contracts included in the Benchmark; and (ii) forward currency contracts based on currencies represented in the Benchmark,<sup>11</sup> in each case

<sup>10</sup> The current Sector (and Component) Base Weights when the Energy Sector is long are as follows: Energy 18.75% (light crude 8.50%, natural gas 4.25%, RBOB 3.0%, heating oil 3.0%); Grains 11.50% (soybeans 5.0%, corn 4.0%, wheat 2.50%); Precious Metals 5.25% (Gold 3.50%, Silver 1.75%); Industrial Metals 5.0% (copper 5.0%); Livestock 5.0% (live cattle 3.0%, lean hogs 2.0%); Coffee 1.5%; Cocoa 1.0%; Cotton 1.0%; Sugar 1.0%; Euro 13.0%; Japanese Yen 12.0%; U.S. Treasury Note 7.50%; U.S. Treasury Bond 7.50%; British Pound 5.00%; Swiss Franc 2.0%; Australian Dollar 2.0%; and Canadian Dollar 1.00%.

The current Sector (and Component) Base Weights when the Energy Sector is flat are as follows: Energy 0% (light crude 0%, natural gas 0%, RBOB 0%, heating oil 0%); Grains 14.15% (soybeans 6.15%, corn 4.92%, wheat 3.08%); Precious Metals 6.46% (gold 4.31%, silver 2.15%); Industrial Metals 6.15% (copper 6.15%); Livestock 6.15% (live cattle 3.69%, lean hogs 2.46%); Coffee 1.85%; Cocoa 1.23%; Cotton 1.23%; Sugar 1.23%; Euro 16.0%; Japanese Yen 14.77%; U.S. Treasury Note 9.23%; U.S. Treasury Bond 9.23%; British Pound 6.15%; Swiss Franc 2.46%; Australian Dollar 2.46%; and Canadian Dollar 1.23%.

<sup>11</sup> The Fund's investments in commodity futures contracts will be limited by the application of position limits imposed by the CFTC and U.S. futures exchanges intended to prevent undue influence on prices by a single trader or group of affiliated traders. The Adviser has represented that the Fund's investment in futures contracts will be limited to investments in the U.S. listed futures contracts included in the Benchmark, except that the Fund may invest up to 10% of its assets in U.S. listed commodity and currency futures contracts not included in the Benchmark in a manner designed to achieve its investment objective.

collateralized or otherwise backed by Government Securities. The Fund may invest up to 30% of its assets in a combination of swap transactions<sup>12</sup> and commodity-linked notes.<sup>13</sup> The Fund's

The U.S. listed commodity futures contracts included in the Benchmark (and therefore included in the Fund) are heavily traded and are based on some of the world's most liquid and actively-traded commodities. As of August 31, 2010, the ten commodity futures contracts that are given the greatest weighting in the Benchmark, and their three-month Average Daily Dollar Volume ("ADDV"), were: high grade copper (6.15% weight; ADDV \$528,158,471); soybeans (6.06% weight; ADDV \$3,172,701,410); corn (4.67% weight; ADDV \$2,528,323,106); gold (4.29% weight; ADDV \$6,226,943,776); live cattle (3.75% weight; ADDV \$566,731,652); wheat (3.42% weight; ADDV \$1,385,115,481); lean hogs (2.40% weight; ADDV \$339,611,918); silver (2.17% weight; ADDV \$641,111,990); coffee (1.85% weight; ADDV \$505,778,511); and cocoa (1.23% weight; ADDV \$144,259,844).

The Fund will not invest in any currency that is not represented in the Benchmark. The listed financial futures contracts included in the Benchmark (and therefore included in the Fund) are heavily traded and represent six of the world's most liquid and actively-traded currencies (as well as the U.S. dollar through futures on Treasury bonds and 10 year notes) as measured by daily turnover. For example, according to Table B.5 of the 2007 Triennial Central Bank Survey of Foreign Exchange and Derivative Market Activity by the Bank for International Settlements ("BIS 2007 Survey"), the most actively traded currency pairs against the U.S. dollar (based on average daily turnover in U.S. dollars at current exchange rates in April 2007) were as follows: euro (\$840 billion), yen (\$397 billion), British pound (\$361 billion), Australian dollar (\$175 billion), Swiss franc (\$143 billion), and Canadian dollar (\$115 billion). According to Table E.2 of the BIS 2007 Survey, the daily turnover in April 2007 consisted of the following (in billions of U.S. dollars) (approximate):

Each of the currencies listed above is represented by U.S. listed financial futures contracts in the Benchmark.

As of August 31, 2010, the weighting of the financial futures contracts in the Benchmark, and their respective three month ADDV, was: euro (16.00% weight; ADDV \$43,890,327,409); Japanese yen (14.77% weight; ADDV \$16,832,896,412); U.S. Treasury 10 yr. note (9.23% weight; ADDV \$15,149,128,260); U.S. Treasury Bond (9.23% weight; ADDV \$5,233,746,635); British pound (6.15% weight; ADDV \$9,822,322,233); Australian dollar (2.46% weight; ADDV U.S. \$8,172,424,454); Swiss franc (2.46% weight; ADDV \$4,342,434,023); and Canadian dollar (1.23% weight; ADDV U.S. \$7,560,986,056). The Adviser represents that the returns of the forward currency contracts held by the Fund will be highly correlated to the returns of the listed futures contracts included in the Benchmark.

<sup>12</sup> The Fund will enter into over-the-counter swap transactions only with respect to transactions based on (i) the return of the Benchmark or any subset of the Benchmark, (ii) any Component in the Benchmark, or (iii) any commodity or currency represented in the Benchmark.

<sup>13</sup> The Fund may invest in commodity-linked notes. Commodity-linked notes are over-the-counter debt instruments, typically issued by a bank or broker-dealer, that are designed to provide cash flows linked to the value of a reference asset. They provide exposure, which may include long and/or short exposure, to the investment returns of the reference asset underlying the note. The performance of these notes is determined by the

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<sup>9</sup> To arrive at the Sector weightings when the Energy Sector is flat, divide the Sector Base Weight by one minus the Energy Sector Base Weight (*i.e.*, Sector Base Weight/(1-0.1875)).

investments in listed futures contracts, forward currency contracts and swap

transactions will be backed by investments in Government Securities

in an amount equal to the exposure of such contracts.

	Total	Spot	Forward	Swap
Euro .....	840	265	90	485
Yen .....	397	140	42	215
British Pound .....	361	103	30	228
Australian Dollar .....	175	39	15	121
Swiss Franc .....	143	49	12	81
Canadian Dollar .....	115	33	12	69

The Fund will be managed so that the long and short exposure of the Fund's portfolio is economically similar to the long and short positions in the Benchmark. This does not, however, mean that the long and short exposures will be identical. The Fund's positions in such listed futures contracts may deviate from the Benchmark when the Adviser or the Sub-Adviser believes it is in the best interest of the Fund to do so.<sup>14</sup> For example, the Fund may deviate from the Benchmark in order to manage cash flows in and out of the Fund, such as in connection with the payment of dividends or expenses, to manage portfolio holdings around Benchmark changes, or to comply with the 1940 Act, the Commodity Exchange Act ("CEA"), the Internal Revenue Code of 1986 ("Code"), exchange position limits or other applicable laws, rules and regulations.

To the extent the Fund invests in futures contracts it will do so only in accordance with Rule 4.5 of the CEA. The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the CEA. The Fund does not invest directly in physical commodities.

The Fund's investment in Government Securities shall be limited to investments: (i) To satisfy margin requirements, to provide collateral or to otherwise back investments in commodity- and currency-linked derivatives (such as futures contracts, forward contracts and swaps); (ii) to help manage cash flows in and out of the Fund, such as in connection with

the payment of dividends or expenses; or (iii) as a substitute for investment in the listed U.S. Treasury futures contracts included in the Benchmark. In addition, the Fund may invest in money market instruments with remaining maturities of one year or less, as well as cash and cash equivalents, in order to collateralize or otherwise back its positions in listed futures contracts, forward currency contracts or swaps or for cash management purposes. All money market securities acquired by the Fund will be rated investment grade. The Fund generally expects to maintain an average portfolio maturity of 90 days or less on its investments in money market securities.

Neither the Fund nor the Benchmark is leveraged. The Fund will be a "non-diversified" fund. This means that a relatively high percentage of its assets may be invested in a limited number of securities and instruments. The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company ("RIC") under Subchapter M of the Code.

The Fund will seek to gain exposure to the commodity and currency markets, in whole or in part, through investments in a subsidiary organized in the Cayman Islands ("Subsidiary"). The Subsidiary is wholly-owned and controlled by the Fund, and its investments will be consolidated into the Fund's financial statements. The Fund's and the Subsidiary's holdings will be disclosed on the Fund's website on a daily basis. The Fund's investment in the Subsidiary may not exceed 25% of the Fund's total assets at the end of each fiscal quarter. The Subsidiary's shares will be offered only to the Fund and the

Fund will not sell shares of the Subsidiary to other investors.

The Fund's use of the Subsidiary is designed to help the Fund achieve exposure to commodity and currency returns in a manner consistent with the federal tax requirements applicable to the Fund and other regulated investment companies. The Subsidiary will comply with the 1940 Act except that, unlike the Fund, the Subsidiary may invest without limitation in commodity- and currency-linked investments based on commodities and currencies included within the Benchmark. The Subsidiary will otherwise operate in the same manner as the Fund with regard to applicable compliance policies and procedures. The Fund's Registration Statement states that since the Subsidiary's investments are consolidated into the Fund's, the Fund's combined holdings (including the investments of the Subsidiary) must comply with the 1940 Act.

The Fund will not invest in non-U.S. equity securities (other than shares of the Subsidiary).

#### *The Shares:*

According to the Registration Statement, the Fund issues and redeems Shares on a continuous basis at net asset value ("NAV")<sup>15</sup> only in large blocks of Shares, typically 50,000 Shares or more ("Creation Unit Aggregations"), in transactions with Authorized Participants. Only institutional investors who have entered into an Authorized Participant agreement may purchase or redeem Creation Unit Aggregations. Orders to create or redeem Creation Unit Aggregations of the Fund must be delivered through an Authorized Participant prior to the

price movement of the reference asset underlying the note. The Fund's investment in commodity-linked notes will be limited to notes providing exposure to (i) the Benchmark or any subset of the Benchmark, (ii) any Component of the Benchmark or (iii) any commodity or currency represented in the Benchmark. As noted, the Benchmark consists of heavily traded U.S. listed futures contracts based on liquid and actively-traded commodities and currencies and there is also an active market for forward currency contracts and other derivatives based on the commodities and currencies

represented in the Benchmark. In addition, the Benchmark is widely followed and currently serves as the basis for a range of investment products, including funds, swap contracts and other derivatives. The Fund's overall investment in swaps and commodity-linked notes will not exceed 30% of the Fund's assets.

<sup>14</sup> The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

<sup>15</sup> The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4 p.m. Eastern time ("NAV Calculation Time"). NAV per Share is calculated by dividing the Fund's net assets by the number of Fund Shares outstanding. For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

Fund's NAV calculation time. The consideration for purchase of Creation Unit Aggregations of the Fund will consist of the in-kind deposit of a designated portfolio of Government Securities and/or listed futures contracts included in the Benchmark ("Deposit Securities") and an amount of cash ("Cash Component"). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of the Fund. The Fund Deposit may consist entirely of cash.

The process to redeem Creation Unit Aggregations works much like the process to purchase Creation Unit Aggregations, but in reverse.

Each business day prior to the opening of trading the Fund will publish the specific securities and designated amount of cash included in that day's basket for the Fund through the National Securities Clearing Corporation or other method of public dissemination. The Fund reserves the right to accept or pay out a basket of securities or cash that differs from the published basket. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in proper form.

Additional information regarding the Fund and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### *Availability of Information:*

The Fund's website (<http://www.wisdomtree.com>), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),<sup>16</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums

of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session<sup>17</sup> on the Exchange, the Trust will disclose on its website the identities and quantities of the portfolio of securities and other assets ("Disclosed Portfolio")<sup>18</sup> held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>19</sup> On a daily basis, the Adviser (using an automated process currently used by existing WisdomTree Funds) will disclose for each portfolio security or other investment of the Fund the following information: ticker symbol (if applicable), name or description of security or investment, number of shares or dollar value of investments held in the portfolio, and percentage weighting of the security or investment in the portfolio. The website information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the "Portfolio Indicative Value," that reflects an estimated intra-day value of the Fund's portfolio, will be disseminated. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Intra-day and end-of-day prices are readily available through Bloomberg,

other major market data providers and broker-dealers for the Benchmark, the listed futures contracts included in the Benchmark, the commodities and currencies represented in the Benchmark, and the forward currency contracts, swaps, notes and other derivatives based on the Benchmark. As a result, information necessary to evaluate the value of any swap or commodity-linked note purchased by the Fund will be readily available to market participants. Intra-day prices for the Benchmark are updated and disseminated at least every 15 seconds during the Core Trading Session on the Exchange.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's website at <http://www.sec.gov>.

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

#### *Initial and Continued Listing:*

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must be in compliance with Rule 10A-3 under the Exchange Act,<sup>20</sup> as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share for the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

#### *Trading Halts:*

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Shares of the Fund will be

<sup>17</sup> The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

<sup>18</sup> The Exchange notes that NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) provides 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.

<sup>19</sup> Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>16</sup> The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and/or its service providers.

<sup>20</sup> See 17 CFR 240.10A-3.

halted if the “circuit breaker” parameters in NYSE Arca Equities Rule 7.12 are reached. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. Such rule provides that, if the Portfolio Indicative Value (as defined in Rule 8.600(c)(3)) of a series of Managed Fund Shares is not being disseminated as required, the Corporation may halt trading during the day in which the interruption to the dissemination of the Portfolio Indicative Value occurs. If the interruption to the dissemination of the Portfolio Indicative Value persists past the trading day in which it occurred, the Corporation will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.

#### *Trading Rules:*

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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

#### *Surveillance:*

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which includes Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these

procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

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

The Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from NYMEX, ICE Futures and other exchanges that are members of ISG.<sup>21</sup>

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

#### *Information Bulletin:*

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares

will be calculated after 4 p.m. Eastern time each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>22</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

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

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

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

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

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

<sup>21</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all of the components of the Disclosed Portfolio for the Fund may trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-98 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NYSEArca-2010-98. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those 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 20549-1090 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office. 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-2010-98 and should be submitted on or before December 8, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-28894 Filed 11-16-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63299; File No. SR-BYX-2010-005]

### **Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.**

November 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 29, 2010, BATS Y-Exchange, Inc. ("Exchange", "BYX Exchange" or "BYX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BYX has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change**

The Exchange proposes to modify its fee schedule applicable to Members<sup>5</sup> of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 1, 2010.

The text of the proposed rule change is available at the Exchange's Web site at <http://www.batstrading.com>, at the principal office of the Exchange, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

##### **1. Purpose**

The Exchange is proposing to modify its fee schedule to revise pricing for routed orders that are sent to and executed by the Exchange's affiliate, BATS Exchange, Inc. ("BZX Exchange"). Effective November 1, 2010, BZX Exchange is increasing its standard fee to remove liquidity to \$0.0028 per share.<sup>6</sup> The Exchange has various routing strategies and order types that route to BZX Exchange and charge the current remove rate charged by BZX Exchange. These strategies include BYX + BZX Exchange Destination Specific Orders orders<sup>7</sup> (referred to by the Exchange as "B2B" orders), the TRIM routing strategy<sup>8</sup> and the SLIM routing strategy.<sup>9</sup> The Exchange proposes to increase the fee for executions at BZX Exchange through B2B, TRIM and SLIM to \$0.0028 per share, consistent with the BZX Exchange fee increase.

In addition to the changes described above, the Exchange proposes to use the name "BYX Exchange" and "BYX" throughout the fee schedule. Similarly, the Exchange proposes defining its affiliate, as it has done above, as "BZX Exchange." Also, the Exchange proposes to make stylistic changes, including referring to its book of orders as its "order book," rather than just its "book."

##### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the

<sup>6</sup> See "BATS October U.S. Markets Update and Pricing November 1, 2010" (October 25, 2010), available at: <http://batstrading.com/resources/fee-schedule/2010/BATS-October-US-Markets-Update-and-Pricing-November-1-2010.pdf>.

<sup>7</sup> As defined in BYX Rule 11.9(c)(12), a "Destination Specific Order" is "[a] market or limit order that instructs the System to route the order to a specified away trading center or centers, after exposing the order to the BATS Book."

<sup>8</sup> As defined in BYX Rule 11.13(a)(3)(G), "TRIM is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table."

<sup>9</sup> As defined in BYX Rule 11.13(a)(3)(H), "SLIM is a routing option under which an order checks the System for available shares and then is sent to destinations on the System routing table."

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

<sup>5</sup> A Member is any registered broker or dealer that has been admitted to membership in the Exchange.