in the program, will increase the level of competition around executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(6) thereunder.[7] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [8] normally does not become operative prior to 30 days after the date of the filing.[9] However, pursuant to Rule 19b4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposal would explicitly state that RLPs could submit RPIs in non-assigned securities, which should allow retail orders additional opportunities to receive price improvement. Therefore, the Commission designates the proposed rule change as operative upon filing.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2013–04 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–NYSE–2013–04. 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–NYSE–2013–04 and should be submitted on or before February 19, 2013.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01839 Filed 1–28–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68708; File No. SR–NYSEArca–2012–131]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF Under NYSE Arca Equities Rule 5.2(j)(3)

January 23, 2013.

I. Introduction

On November 21, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4

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[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 240.19b–4(f)(6).

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

[10] 17 CFR 240.19b–4(f)(6)(iii).

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

[12] 15 U.S.C. 78s(b)(2)(B).

[13] 17 CFR 200.30–3(a)(12).

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

thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Horizons S&P 500 Covered Call ETF, Horizons S&P Financial Select Sector Covered Call ETF, and Horizons S&P Energy Select Sector Covered Call ETF (each, a ''Fund,'' and collectively, ''Funds'') under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published in the **Federal Register** on December 10, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares will be offered by Exchange Traded Concepts Trust II (''Trust''), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.[4] The investment adviser to the Funds is Exchange Traded Concepts, LLC (''Adviser''), and the sub-adviser to the Funds is Horizons ETFs Management (USA) LLC (''Sub-Adviser'').[5] Foreside Fund Services, LLC is the principal underwriter and distributor of the Funds' Shares. Citi Fund Services Ohio, Inc. will serve as administrator for the Funds; Citibank, NA will serve as custodian for the Funds; and Citi Fund Services Ohio, Inc. will serve as transfer agent for the Funds.

As described below, each Fund will seek investment results that, before fees and expenses, generally correspond to the performance of a specified index (each, an ''Underlying Index'') provided by S&P Dow Jones Indices LLC (''Index Provider'').[6] Each Underlying Index is comprised of all the equity securities in one of the S&P 500 Index, S&P Financial Select Sector Index, or S&P Energy Select Sector Index (each, a ''Reference Index'') and short (written) call options on each of the option eligible securities in the relevant Reference Index that meet, among others, stock and option price criteria of the Underlying Index methodology.[7]

The Exchange submitted this proposed rule change because the Underlying Indices for the Funds do not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.''[8] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3)[9] sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described further below, each of the Underlying Indices consists of all the equity securities in one of the Reference Indices and short (written) call options on each of the option eligible securities in the relevant Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology. All securities in the Reference Indices are listed and traded on a U.S. national securities exchange and the options on the option eligible securities of companies in the Reference Indices are traded on a U.S. national options exchange. The market value of the call options will not represent more than 10% of the total weight of any of the Underlying Indices. The Exchange has represented that the Underlying Indices meet all requirements of NYSE Arca Equities Rule 5.2(j)(3) and Commentary .01(a)(A) thereto, except that the Underlying Indices include call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.[10]

Horizons S&P 500 Covered Call ETF

The Horizons S&P 500 Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund's Underlying Index, which is the S&P 500 Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities[11] in the Fund's Reference Index, which is the S&P 500 Index, and short (written) call options on each of the option eligible securities in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.[12] The Fund will invest at least 80% of its total assets in securities that comprise its Underlying Index.

The Reference Index for the Fund is a float-adjusted market capitalization weighted index containing equity securities of 500 industrial, information technology, utility, and financial companies amongst other Global Industry Classification Standard (''GICS®'') sectors, regarded as generally representative of the U.S. stock market. A float-adjusted market capitalization weighted index weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market.

The Underlying Index for the Fund measures the performance of a

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68351 (December 4, 2012), 77 FR 73500 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On September 10, 2012, the Trust filed with the Commission an amendment to its Form N–1A under the Securities Act of 1933 and under the 1940 Act relating to the Funds (File Nos. 333–180871 and 811–22700) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. *29065* (December 1, 2009) (File No. 812–13638).

[5] The Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the portfolio holdings of the Funds. The Sub-Adviser is also affiliated with a broker-dealer and has implemented a fire wall with respect to its broker dealer affiliate regarding access to information concerning the portfolio holdings of the Funds. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Funds, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolios.

[6] Each of the Underlying Indices is provided by the Index Provider, which is unaffiliated with the Funds, the Adviser, or the Sub-Adviser. The Index Provider maintains, calculates, and publishes information regarding each of the Underlying Indices. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indices.

[7] The Underlying Index methodology is available at *www.standardandpoors.com/indices*. The Exchange provides that, as of October 26, 2012, such criteria include, among others, that no call options will be written if the equity security price is less than $10, and no call options will be written at prices below $0.15. The Index Provider may amend the methodology from time to time. In such case, the methodology would be updated accordingly on the Web site.

[8] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[9] Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in part, that the components of an index of US Component Stocks, upon the initial listing of a series of Units pursuant to Rule 19b–4(e) under the Exchange Act shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act. *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

[10] *See id.*

[11] ''Equity securities'' includes all U.S. common equities listed on the Exchange, the New York Stock Exchange, NYSE MKT, the NASDAQ Global Select Market, the NASDAQ Select Market, and the NASDAQ Capital Market. Business development companies and real estate investment trusts (''REITs'') are eligible for inclusion as equity securities, with the exception of mortgage REITs.

[12] *See* note 7, *supra.*

hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options [13] that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

The Fund will be an index fund that employs a ''passive management'' investment strategy in seeking to achieve its objective. The Adviser's strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities, which options will be indexed to the Underlying Index, generally one standard deviation ''out-of-the-money.'' [14] Options are written systematically ''out-of-the-money'' in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

Because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 500 companies, 499 of which are option eligible, with a market capitalization range of between approximately $1 billion and $622 billion. As of that date, the Underlying Index also included short (written) call options on 434 option eligible securities of the Reference Index, representing 0.6% of the total weight [15] of the Underlying Index.

The Fund will generally use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time-to-time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

The Fund will concentrate its investments (*i.e.,* hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in a particular issue in comparison to a ''diversified'' fund. Moreover, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Internal Revenue Code of 1986, as amended (''Code'').

Horizons S&P Financial Select Sector Covered Call ETF

The Horizons S&P Financial Select Sector Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund's Underlying Index, which is the S&P 500 Financial Select Sector Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities [16] in the Fund's Reference Index, which is the S&P Financial Select Sector Index, and short (written) call options on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.[17] The Fund will invest at least 80% of its total assets in the securities that comprise its Underlying Index.

The Reference Index for the Fund is a rules-based, modified market capitalization weighted index that is designed to track the movements of public companies that are components of the S&P 500 Index and are classified in the GICS® sector, Financials. A modified market capitalization weighted index first weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market, then imposes limits on the weight of individual index components and redistributes any excess weight across the remaining index components. A wide array of diversified financial service firms are featured in this sector with business lines ranging from investment management to commercial and investment banking.

The Underlying Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options [18] that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

The Fund will be an index fund that employs a ''passive management'' investment strategy in seeking to achieve its objective. The Adviser's strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities indexed to the Underlying Index, which options will be generally one standard deviation ''out-of-the-money.'' [19] Options are written systematically ''out-of-the-money'' in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

Because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 81 companies, of

[13] An ''out-of-the-money'' call option is one in which the exercise (or ''strike'') price of the option is above the market price of the security.

[14] A covered call strategy is generally considered to be an investment strategy in which an investor buys a security, and sells a call option that corresponds to the security. In return for a premium, the Fund will give the purchaser of the option written by the Fund either the right to buy the security from the Fund at an exercise price or the right to receive a cash payment equal to the difference between the value of the security and the exercise (or ''strike'') price, if the value is above the exercise price on or before the expiration date of the option. In addition, the covered call options hedge against a decline in the price of the securities on which they are written to the extent of the premium the Fund receives. A covered call strategy is generally used in a neutral-to-bullish market environment, where a slow and steady rise in market prices is anticipated.

[15] This calculation is based on the absolute value of the short call option position which has a negative mark-to-market value.

[16] *See* note 11, *supra.*

[17] *See* note 7, *supra.*

[18] *See* note 13, *supra.*

[19] *See* note 14, *supra.*

which all 81 are option eligible, with a market capitalization range of between approximately $2 billion and $181 billion. As of that date, the Underlying Index also included short (written) call options on 65 option eligible securities of the Reference Index, representing 0.7% of the total weight [20] of the Underlying Index.

The Fund will generally use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time-to-time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

The Fund will concentrate its investments (*i.e.,* hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in a particular issue in comparison to a ''diversified'' fund. Moreover, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Code.

Horizons S&P Energy Select Sector Covered Call ETF

The Horizons S&P Energy Select Sector Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund's Underlying Index, which is the S&P 500 Energy Select Sector Stock Covered Call Index. The Fund seeks correlation of 0.95 or better between its performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation. As described below, the Underlying Index is comprised of all the equity securities [21] in the Fund's Reference Index, which is the S&P Energy Select Sector Index, and short (written) call options on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.[22] The Fund will invest at least 80% of its total assets in the securities that comprise its Underlying Index.

The Reference Index for the Fund is a rules-based, modified market capitalization weighted index that is designed to track the movements of public companies that are components of the S&P 500 Index and are classified in the GICS® sector, Energy. A modified market capitalization weighted index first weights each index component according to its market capitalization, using the number of shares that are readily available for purchase on the open market, then imposes limits on the weight of individual index components and redistributes any excess weight across the remaining index components. Energy companies in this sector primarily develop and produce crude oil and natural gas, and provide drilling and other energy-related services.

The Underlying Index for the Fund measures the performance of a hypothetical portfolio that employs a covered call strategy. It consists of long positions in companies in the Reference Index and out-of-the-money call options [23] that are written (sold) systematically on the option eligible securities of companies in the Reference Index that meet, among others, the stock and option price criteria of the Underlying Index methodology.

The Fund will be an index fund that employs a ''passive management'' investment strategy in seeking to achieve its objective. The Adviser's strategy will consist of holding an equity portfolio indexed to the Reference Index and writing (selling) covered call options on these equity securities, which options will be indexed to the Underlying Index, generally one standard deviation ''out-of-the-money.'' [24] Options are written systematically ''out-of-the-money'' in accordance with the index methodology based on the prevailing individual level of volatility for each of the equity securities. The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

Because a covered call strategy generates income in the form of premiums on the written options, the Underlying Index is generally expected to provide higher total returns with lower volatility than the Reference Index in most market environments, with the exception of when the equity market is rallying rapidly. The options in the Underlying Index will be traded on national securities exchanges. As of August 31, 2012, the Reference Index and Underlying Index included common stocks of 45 companies, of which all 45 are option eligible, with a market capitalization range of between approximately $1 billion and $276 billion. As of that date, the Underlying Index also included short (written) call options on 42 option eligible securities of the Reference Index, representing 0.6% of the total weight [25] of the Underlying Index.

The Fund generally will use a replication methodology, meaning it will invest in all of the securities comprising the Underlying Index in proportion to the weightings in the Underlying Index. However, the Fund may from time to time utilize a sampling methodology under various circumstances where it may not be possible or practicable to purchase all of the equity securities and write (sell) all of the call options comprising the Underlying Index.

The Fund will concentrate its investments (*i.e.,* hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be non-diversified under the 1940 Act and, therefore, may invest a greater percentage of its assets in a particular issue in comparison to a ''diversified'' fund. Moreover, in pursuing its objective, the Fund may hold the securities of a single issuer in an amount exceeding 10% of the outstanding voting securities of the issuer, subject to restrictions imposed by the Code.

Investment Guidelines

Each Fund will write (sell) call options on the option eligible securities of companies in its Reference Index to the same extent as such short call options are included in its Underlying Index. The Funds will utilize options in accordance with Rule 4.5 of the Commodity Exchange Act (''CEA''). The Trust, on behalf of the Funds, 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 Funds are not subject to registration or regulation as a commodity pool operator under the CEA.

Other Investments

Each Fund may invest in short-term instruments, including money market instruments, on an ongoing basis to provide liquidity for cash equitization, funding, or under abnormal market conditions. Money market instruments

[20] *See* note 15, *supra.*

[21] *See* note 11, *supra.*

[22] *See* note 7, *supra.*

[23] *See* note 13, *supra.*

[24] *See* note 14, *supra.*

[25] *See* note 15, *supra.*

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 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 S&P, or if unrated, of comparable quality as determined by the Sub-Adviser; (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; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Sub-Adviser, are of comparable quality to obligations of U.S. banks which may be purchased by a Fund. Any of these instruments may be purchased on a current or a forward-settled basis.

Each Fund may invest in the securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A Securities. The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the 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 a Fund's net assets are held in illiquid securities and other illiquid assets.

Each Fund will seek to qualify for treatment as a regulated investment company under the Code.

Additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[26]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[27] and the rules and regulations thereunder applicable to a national securities exchange.[28] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[29] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the applicable requirements of NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[30] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. The intra-day, closing, and settlement prices of the portfolio securities held by the Funds will be readily available from the securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The value of each Underlying Index will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time), and information regarding the components of each Reference Index and Underlying Index and their percentage weightings will be available from the Index Provider and major market data vendors. In addition, quotation and last-sale information for the components of the Underlying Indices and Reference Indices will be available from the exchanges on which they trade. An indicative optimized portfolio value (''IOPV'') for the Shares for each Fund will be widely disseminated at least every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[31] On each business day, prior to commencement of trading of the Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the securities and financial instruments in each Fund's portfolio that will form the basis for each Fund's calculation of net asset value (''NAV'') at the end of the business day.[32] Each Fund's NAV will be determined as of the close of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for trading. Each Fund, through the National Securities Clearing Corporation, will make publicly available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time), a basket composition file for each Fund, which includes the security names and share quantities required to be delivered in exchange for that Fund's Shares, together with estimates and actual cash components, which basket will represent one Creation Unit of the relevant Fund.[33] Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. The Adviser's

[26] *See* Notice and Registration Statement, *supra* notes 3 and 4.

[27] 15 U.S.C. 78f.

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

[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[31] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .01(c). According to the Exchange, several major market data vendors widely disseminate IOPVs taken from the CTA or other data feeds. *See* Notice, *supra* note 3, at 73505.

[32] On a daily basis, each Fund will disclose for each portfolio security and other financial instrument of the Fund the following information on the Funds' Web site: ticker symbol (if applicable), name of securities and financial instruments, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the securities and financial instruments in the portfolio. The Web site information will be publicly available at no charge.

[33] A Creation Unit of each Fund will consist of at least 50,000 Shares, and will be issued and redeemed for securities in which the Fund invests, cash, or both securities and cash.

Web site will also include a form of the prospectus for the Funds, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and will be made available to all market participants at the same time.[34] If the IOPV or the relevant Underlying Index value of a Fund is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs. If the interruption to the dissemination of the applicable IOPV or Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading.[35] In addition, if the Exchange becomes aware that the NAV of a Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares of such Fund on the Exchange until such time as the NAV is available to all market participants. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser and the Sub-Adviser are affiliated with broker-dealers and have implemented a fire wall with respect to their respective broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Funds.[36] The Exchange further states that the Index Provider is neither a broker-dealer nor affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Indices. The Commission notes that the Exchange would be able to obtain information with respect to the equity securities and options comprising the Underlying Indices and which will be held by the Funds because such equity securities and options will be listed and traded on U.S. national securities exchanges, all of which are members of the Intermarket Surveillance Group (''ISG'').

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Investment Company Units shall apply to the Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Investment Company Units, 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. All equity securities and options comprising the Underlying Indices are listed and traded on U.S. exchanges, which are members of ISG.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) 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; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (d) how information regarding the IOPV is disseminated; (e) 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 (f) trading information.

(5) The market value of the call options included in each Underlying Index will not represent more than 10% of the total weight of each Underlying Index. Each call option included in each Underlying Index must meet the criteria of the Underlying Index methodology, which methodology is publicly available.

(6) Each Fund seeks a correlation over time of 0.95 or better between the Fund's performance and the performance of its Underlying Index. A figure of 1.00 would represent perfect correlation.

(7) A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities.

(8) Each Fund will invest at least 80% of its total assets in securities that comprise its applicable Underlying Index.

(9) A minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

(10) For initial and continued listing, each Fund will be in compliance with Rule 10A–3 under the Act,[37] as provided by NYSE Arca Equities Rule 5.3.

The Exchange further represents that the Funds and the Shares will comply with all other requirements applicable to Investment Company Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indices, IOPV, and NAV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers, and Information Bulletin to ETP Holders (each as described in more detail herein and in the Notice), as set forth in Exchange rules applicable to Investment Company

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[34] *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(v).

[35] 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 a Fund. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also 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 and/or the financial instruments comprising the relevant Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[36] *See* notes 5 and 6, *supra.* The Commission also notes 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 Sub-Adviser and their 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.

[37] 17 CFR 240.10A–3.

Units and prior Commission orders approving the listing rules applicable to the listing and trading of Investment Company Units. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [38] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[39] that the proposed rule change (SR–NYSEArca2012–131) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01811 Filed 1–28–13; 8:45 am]

BILLING CODE 8011–01–P

[38] 15 U.S.C. 78f(b)(5).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Medis Technologies Ltd., Modern Medical Modalities Corp., National Datacomputer, Inc., New Media Lottery Services, Inc., Sino-Bon Entertainment, Inc., Tamir Biotechnology, Inc., and Techmedia Advertising, Inc.,

January 25, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Medis Technologies Ltd. because it has not filed any periodic reports since the period ended June 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Modern Medical Modalities Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Datacomputer, Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of New Media Lottery Services, Inc. because it has not filed any periodic reports since the period ended April 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Sino-Bon Entertainment, Inc. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tamir Biotechnology, Inc. because it has not filed any periodic reports since the period ended January 31, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Techmedia Advertising, Inc. because it has not filed any periodic reports since the period ended April 30, 2010.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 25, 2013, through 11:59 p.m. EST on February 7, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–01962 Filed 1–25–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Largo Vista Group, Ltd., Montavo, Inc., OBN Holdings, Inc., PrepaYd, Inc., Ready Welder Corp., and Snowdon Resources Corp.; Order of Suspension of Trading

January 25, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Largo Vista Group, Ltd. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Montavo, Inc. because it has not filed any periodic reports since the period ended June 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of OBN Holdings, Inc. because it has not filed any periodic reports since the period ended March 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of PrepaYd, Inc. because it has not filed any periodic reports since the period ended December 31, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ready Welder Corp. because it has not filed any periodic reports since the period ended September 30, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Snowdon Resources Corp. because it has not filed any periodic reports since the period ended January 31, 2011.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 25, 2013, through 11:59 p.m. EST on February 7, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–01964 Filed 1–25–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In the Matter of Law Enforcement Associates Corp., Matrixx Resource Holdings, Inc., Mortgage Assistance Center Corp., Sino Shipping Holdings, Inc., Sonnen Corp., Superior Oil & Gas Co., Tekoil & Gas Corp., Trend Mining Co., and Unico, Inc.

January 25, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information