Form(s) submitted: G–251a and G–251b.

Type of request: Extension without change of a currently approved collection.

Affected public: Business or other for profit.

Abstract: The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides, under certain conditions, railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

Changes proposed: The RRB proposes no changes to the forms in the information collection.

The burden estimate for the ICR is as follows:

Form number	Annual responses	Time (minutes)	Burden (hours)
G–251a	125	20	42
G–251b	305	20	102
Total	430	....	144

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV.*

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2013–09209 Filed 4–18–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69373; File No. SR–NYSEArca–2012–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

April 15, 2013.

I. Introduction

On September 27, 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 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). On October 2, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published in the **Federal Register** on October 18, 2012.[4] On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On January 16, 2013, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[7] The Commission thereafter received one comment letter on the proposal.[8] 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 Fund 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 issued by the ALPS ETF Trust (''Trust'').[9] ALPS Advisors, Inc. will be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC will be the Fund's investment sub-adviser (''Sub-Adviser'').[10]

The Bank of New York Mellon (''BNY'') will serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. will be the Fund's distributor (''Distributor''). NYSE Arca will be the ''Index Provider'' for the Fund.[11]

Description of the Fund

The Fund will seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index (''Index''). The Index reflects the performance of a portfolio consisting of over-the-counter (''OTC'') ''down-and-in'' put options that have been written on 20 of the most volatile U.S. stocks that also have market capitalization of at least $5 billion.

In seeking to replicate, before expenses, the performance of the Index,

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

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the filing to specify that a list of components of the Index (as defined below), with percentage weightings, will be available on the Exchange's Web site, and that the Exchange may halt trading in the Shares (as defined below) if the Index value, or the value of the components of the Index, is not available or not disseminated as required.

[4] *See* Securities Exchange Act Release No. 68043 (October 12, 2012), 77 FR 64153 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 68320, 77 FR 72429 (Dec. 5, 2012).

[7] *See* Securities Exchange Act Release No. 68671, 78 FR 4919 (Jan. 23, 2013) (''Order Instituting Proceedings'').

[8] *See* Letter from Kevin Rich, Rich Investment Solutions, LLC, dated February 12, 2013 (''Rich Letter'').

[9] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 22, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). 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. 28262 (May 1, 2008) (File No. 812–13430).

[10] The Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the 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 and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[11] NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and will implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

the Fund will generally sell (*i.e.,* write) 90-day OTC down-and-in put options, as described below, in proportion to their weightings in the Index on economic terms which mirror those of the Index. Each option written by the Fund will be covered through investments in three-month Treasury bills (''T-bills'') at least equal to the Fund's maximum liability under the option *(i.e.,* the strike price). The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.[12]

The Exchange submitted this proposed rule change because the Index for the Fund does 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 ''U.S. Component Stocks.'' [13] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of U.S. Component Stocks. Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of U.S. Component Stocks, upon the initial listing of a series of Investment Company 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.[14] As described further below, the Index consists of OTC down-and-in put options. The Exchange has represented that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index includes OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index measures the return of a hypothetical portfolio consisting of OTC down-and-in put options which have been written on each of 20 stocks and a cash position calculated as described below. The 20 stocks that will underlie the options in the Index are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. These stocks will be required to be NMS stocks, as defined in Rule 600 of Regulation NMS.

A down-and-in option is a contract that becomes a typical option (*i.e.,* the option ''knocks in'' at a predetermined strike price) once the underlying stock declines to a specified price (''barrier price''). These types of options have the same return as ''reverse convertible'' securities, which convert into the underlying stock (or settle in cash) only upon a decline in the value of the underlying stock rather than a rise (as is the case with typical convertible instruments).

Each option included in the Index will be a ''European-style'' option (*i.e.,* an option which can only be exercised at its expiration) with a 90-day term. The strike prices of the option positions included in the Index will be determined based on the closing prices of the options' underlying stocks as of the beginning of each 90-day period. The barrier price of each such option will be 80% of the strike price. At the expiration of each 90-day period, if an underlying stock closes at or below its respective barrier price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock will be deemed to be made, and the Index value will be correspondingly reduced. If the underlying stock does not close at or below the barrier price, then the option expires worthless and the entire amount of the premium payment will be retained within the Index.

The components of the Index will be OTC down-and-in put options written on 20 NMS stocks selected based on the following screening parameters:

1. U.S. listing of U.S. companies;
2. Publicly listed and traded options available;
3. Market capitalization greater than $5 billion;
4. Top 20 stocks when ranked by 3-month implied volatility;
5. Each underlying NMS stock will have a minimum trading volume of at least 50 million shares for the preceding six months; and
6. Each underlying NMS stock will have a minimum average daily trading volume of at least one million shares and a minimum average daily trading value of at least $10 million for the preceding six months.

The selection of the 20 underlying NMS stocks will occur each quarter (March, June, September, and December) two days prior to the third Friday of the month, in line with option expiration for listed options. The selection of the 20 underlying stocks will not, however, be limited to those with listed options expiring in March, June, September, or December.

The Index value will reflect a cash amount invested in on-the-run three-month T-Bills, plus the premium collected on the short position in the 20 down-and-in put options written by the Index each quarter. The notional amount of each of the 20 down-and-in put options will be equal to 1/20th of the cash amount in the Index at the beginning of each quarter. The cash amount (initially 1,000 for the origination date of the Index) will be incremented by premiums generated each quarter from the 20 down-and-in put options sold, then decremented by cash settlements of any down-and-in put options expiring in-the-money and the distribution amount (as described below). The cash amount will be invested in T-Bills and will accrete by interest earned on the T-Bills.

The End of Day Index Value will be calculated as follows: End of Day Index Value = Beginning of Quarter Index Value + Premium Generated—Option Values + Accrued Interest—distribution amount, where:

- Beginning of Quarter Index Value is 1,000 for the origination date of the Index; thereafter, it is the previous quarter-end End of Day Index Value;
- Premium Generated is the sum of Option Values for each of the 20 down-and-in put options sold by the Index at the end of the previous quarter;
- Option Value is the settlement value of each of the 20 down-and-in put options written by the Index at the end of each quarter. The notional amount of each down-and-in put option sold by the Index for the current quarter is 1/20th of the Beginning of Quarter Index Value;
- Accrued Interest is the daily interest earned on the cash amount held by the Index and invested in T-Bills;
- Cash amount of the Index for any quarter is the Beginning of Quarter Index Value plus the Premium Generated for that quarter; and
- Distribution amount for any quarter and paid out at the beginning of the next quarter is 2.5% of the End of Day Index Value for the final day of the quarter. If such an amount exceeds the amount of the Premium Generated, then the

[12] While the Fund will not invest in traditional reverse convertible securities (i.e., those which convert into the underlying stock), the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities (based on equity securities) as if the Fund owned such reverse convertible securities directly.

[13] 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.

[14] *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

distribution amount will equal the Premium Generated.

A total return level for the Index will be calculated and published at the end of each day. The total return calculation will assume the quarterly index distribution is invested directly in the Index at the beginning of the quarter in which it is paid.

The Exchange has provided the following example. Stock ''ABC'' trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option was written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share) for a premium of $4 per share:

- *Settlement above the barrier price:* If at the end of 90 days the ABC stock closed at any value above the barrier price of $40, then the option would expire worthless and the Index's value would reflect the retention of the $4 per share premium. The Index's value thus would be increased by $4 per share on the ABC option position.
- *Settlement at the barrier price:* If at the end of 90 days ABC closed at the barrier price of $40, then the option would settle in cash at the closing price of $40, and the Index's value would be reduced by $10 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $6 per share on the ABC option position.
- *Settlement below the barrier price:* If at the end of 90 days, ABC closed at $35, then the option would settle in cash at the closing price of $35, and the Index's value would be reduced by $15 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $11 per share on the ABC option position.

As discussed above, the Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month T-Bill rate. The cash position is decreased by cash settlement on options which ''knock in'' (*i.e.,* where the closing price of the underlying stock at the end of the 90-day period is at or below the barrier price). The cash position is also decreased by a deemed quarterly cash distribution, currently targeted at the rate of 2.5% of the value of the Index. However, if the option premiums generated during the quarter are less than 2.5%, the deemed distribution will be reduced by the amount of the shortfall.

The Fund's Investments

The Fund, under normal circumstances,[15] will invest at least 80% of its total assets in component securities that comprise the Index and in T-Bills which will be collateral for the options positions. The Fund will enter into the option positions determined by the Index Provider by writing (*i.e.,* selling) OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. By writing an option, the Fund will receive premiums from the buyer of the option, which will increase the Fund's return if the option does not ''knock in'' and thus expires worthless. However, if the option's underlying stock declines by a specified amount (or more), the option will ''knock in'' and the Fund will be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a down-and-in put option, the Fund will be exposed to the amount by which the price of the underlying is less than the strike price. Accordingly, the potential return to the Fund will be limited to the amount of option premiums it receives, while the Fund can potentially lose up to the entire strike price of each option it sells. Further, if the value of the stocks underlying the options sold by the Fund increases, the Fund's returns will not increase accordingly.

Typically, the writer of a put option incurs an obligation to buy the underlying instrument from the purchaser of the option at the option's exercise price, upon exercise by the option purchaser. However, the down-and-in put options to be sold by the Fund will be settled in cash only. The Fund may need to sell down-and-in put options on stocks other than those underlying the option positions contained in the Index if the Fund is unable to obtain a competitive market from OTC option dealers on a stock underlying a particular option position in the Index, thus preventing the Fund from writing an option on that stock.[16]

Every 90 days, the options included within the Index are cash settled or expire, and new option positions are established. The Fund will enter into new option positions accordingly. This 90-day cycle likely will cause the Fund to have frequent and substantial portfolio turnover. If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 90-day period, the Fund will sell additional OTC down-and-in put options which will be exercised or expire at the end of such 90-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 90-day period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[17] including repurchase agreements [18] or other funds which invest exclusively in money market instruments, convertible securities, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index), forward foreign currency exchange

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

[16] The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

[17] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements; and (v) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[18] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

contracts, and in swaps,[19] options (other than options the Fund principally will write), and futures contracts.[20] Swaps, options (other than options the Fund principally will write), and futures contracts (and convertible securities and structured notes) may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[21] The Fund will not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines. The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

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

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended

The Fund will not invest in non-U.S. equity securities. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Pricing Fund Shares

The Fund's OTC down-and-in put options on equity securities will be valued pursuant to a third-party option pricing model. Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. Securities for which market quotations are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believe accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, trading halt in a security, an unscheduled early market close, or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

Creations and Redemptions of Shares

The Trust will issue and sell Shares of the Fund only in ''Creation Units'' of 100,000 Shares each on a continuous basis through the Distributor, without a sales load, at its net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. Creation Units of the Fund generally will be sold for cash only, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus a transaction fee.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), will make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time (''E.T.'')), the amount of the Deposit Cash to be deposited in exchange for a Creation Unit of the Fund.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units.

All orders to create Creation Units, whether through a Participating Party or a DTC participant, must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form by the Fund through BNY and only on a business day. The Fund will not redeem Shares in amounts less than a Creation Unit.

With respect to the Fund, BNY, through the NSCC, will make available prior to the opening of business on NYSE Arca (currently 9:30 a.m. E.T.) on each business day, the amount of cash that will be paid (subject to possible amendment or correction) in respect of redemption requests received in proper form on that day (''Redemption Cash'').

The redemption proceeds for a Creation Unit generally will consist of the Redemption Cash, as announced on the business day of the request for redemption received in proper form, less a redemption transaction fee.

Initial and Continued Listing

The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and

[19] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements will usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap will be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess will be maintained in an account at the Trust's custodian bank.

[20] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[21] Swaps, options (other than options the Fund principally will write), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

5.5(g)(2), except that the Index is comprised of down-and-in put options based on ''U.S. Component Stocks'' [22] rather than U.S. Component Stocks themselves. The Exchange further represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[23] 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 will be calculated daily and made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.alpsetfs.com*), which will be publicly available prior to the public offering of the Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[24] 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.[25]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Fund's portfolio holdings, including information regarding its option positions, will be disclosed each day on the Fund's Web site. The Web site information will be publicly available at no charge.

The NAV per Share for the Fund will be determined once daily as of the close of the NYSE, usually 4:00 p.m. E.T., each day the NYSE is open for trading. NAV per Share will be determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding. As discussed above, the OTC down-and-in put options will be valued pursuant to a third-party option pricing model.[26]

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 will be 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 Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information 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. The value of the Index and the values of the OTC down-and-in put options components in the Index (which will each be weighted at 1⁄20 of the Index value) will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. A list of components of the Index, with percentage weightings, will be available on the Exchange's Web site. Each of the stocks underlying the OTC down-and-in put options in the Index also will underlie standardized options contracts traded on U.S. options exchanges, which will disseminate quotation and last-sale information with respect to such contracts. In addition, the Intraday Indicative Value will be calculated and disseminated by the Exchange, and widely disseminated by one or more major market data vendors, at least every 15 seconds during the Core Trading Session.[27] The Exchange states that the dissemination of the Intraday Indicative Value 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.

Trading Halts

With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[28] Trading in Shares of the 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 comprising the Fund's portfolio holdings 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.

If the Intraday Indicative Value, the Index value, or the value of the components of the Index is not available or is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange will obtain a representation from the Fund that the NAV for the Fund will be calculated daily and will be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading

[22] NYSE Arca Equities Rule 5.2(j)(3) defines the term ''U.S. Component Stock'' to 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.

[23] 17 CFR 240.10A–3.

[24] The Bid/Ask Price of the Fund would be determined using the mid-point of the highest bid and the lowest offer for Shares on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices would be retained by the Fund and its service providers.

[25] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') would be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund would be able to disclose at the beginning of the business day the portfolio that would form the basis for the NAV calculation at the end of the business day.

[26] *See* ''Pricing Fund Shares'' *supra.*

[27] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157. The IIV calculations are based on local market prices and may not reflect events that occur subsequent to the local market's close. *See* Registration Statement, *supra* note 9, at 11.

[28] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

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 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it 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 include Investment Company Units) 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 other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[29]

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

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an Equity Trading Permit (''ETP'') Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin (''Information Bulletin'' or ''Bulletin''). Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[30] As described above, while the Fund will not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.

The Registration Statement states that the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. It further states that because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks would decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in the 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 Units (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 Intraday Indicative Value would not be calculated or publicly disseminated; (4) how information regarding the Intraday 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 would be calculated after 4:00 p.m. E.T. each trading day.

Additional information regarding the Trust, the Fund, and the Shares,

[29] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[30] The Exchange notes that NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

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.[31]

III. Summary of Comment Letters

In the Order Instituting Proceedings, the Commission asked a number of detailed questions about the proposal, including questions related to the trading of the Shares of the Fund, such as the extent to which the down-and-in put options written by the Fund could be subject to manipulation as well as the extent to which market makers would be able to effectively arbitrage the Shares to help keep the intra-day market price in line with the intra-day NAV.[32] The Commission did not receive any comment letters expressing concern about the Shares or the Fund.

The Commission received one comment letter in support of the proposal from the Sub-Adviser.[33] The commenter states that the Fund will provide the benefits of investing in reverse convertible notes while mitigating some negative features associated with reverse convertible notes, including that the Fund will offer diversification by selling options of twenty underlying issuers, rather than just one underlying issuer; the Fund's structure will give investors a lower initial and ongoing cost due to the economies of scale rather than incurring deal by deal imbedded costs for privately placed reverse convertible notes; the Fund will not carry the credit risk of banks and financial firms imbedded into reverse convertible notes; and the Fund will sell options and collect premium upfront, thereby decreasing risks to the Fund as compared to a reverse convertible note.[34]

A. Disclosure Relating to the Shares

In the Order Instituting Proceedings, the Commission requested comment on whether investors would be able to understand the strategy, risks and potential rewards, assumptions and expected performance of the Fund, including the effect of the Fund's exposure to its down-and-in put options.[35] In response, the commenter states its belief that investors in the Fund will clearly under these characteristics of the Fund. First, the commenter states that the name of the Fund is very descriptive and will not be misleading to potential investors.[36] In addition, the commenter states that the Fund's prospectus clearly describes the Fund's strategy and index methodology and construction, provides examples of how the options are structured and hypothetical scenarios regarding changes in stock prices, and contains a ''Who Should Invest'' section.[37]

In the Order Instituting Proceedings, the Commission requested comment on whether the Exchange's rules governing sales practices are adequately designed to ensure the suitability of recommendations regarding the Fund's Shares.[38] In response, the commenter states its belief that the Exchange's rules governing sales practices adequately ensure the suitability of recommendations regarding the Fund's Shares, and that the Exchange's rules governing sales practices should not be altered for the Fund.[39] The commenter notes that NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) imposes obligations on ETP Holders relating to suitability and due diligence, and that the Exchange has represented that, prior to the commencement of trading, it will provide ETP Holders with an Information Bulletin which will describe the suitability requirements of NYSE Arca Equities Rule 9.2(a) and will state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.[40]

In the Order Instituting Proceedings, the Commission requested comment on whether the proposed disclosure of the nature of, and the risks of investing in, the Shares is sufficient.[41] The commenter states that such disclosure is sufficient, as the Exchange has provided a detailed description of the Fund and the Shares in the Notice, and the Fund is required to deliver a prospectus to investors pursuant to Commission rules which will contain key information relating to the Shares necessary to make informed investment decisions.[42]

B. Potential for Manipulation of the Down-and-in Put Options Written by the Fund

In the Order Instituting Proceedings, the Commission requested comment on whether the discontinuous payoff structure of down-and-in put options could give rise to the potential for manipulation.[43] The commenter responds that the down-and-in put options in which the Fund will invest do have the potential to provide an incentive for someone who has a position in an option sold by the Fund, or the Fund itself, to manipulate the price of the underlying stock when it is near the knock-in price on the expiration date, but argues that this potential is very limited because the diversification of the Fund greatly restricts gains from the manipulation of any one underlying stock.[44] The commenter provides examples to illustrate that due to the diversification of the Fund and the market capitalization and daily trading volume requirements for the stock underlying the options positions written by the Fund, the cost of attempting to force a particular underlying stock either higher or lower is not proportional to the prospective gain.[45]

C. Valuation and Arbitrage Relating to the Shares

In the Order Instituting Proceedings, the Commission requested comment on whether the market for OTC down-and-in put options is sufficiently liquid and the pricing of those options is sufficiently transparent (1) for investors to be able to accurately value such options, and (2) for authorized participants and market makers to effectively arbitrage the OTC market and the market for the Shares throughout the trading day.[46] The commenter responds that the market for OTC down-and-in put options is sufficiently liquid and pricing is sufficiently transparent so that the down-and-in put options can be priced uniformly by investors, market makers, and authorized participants.[47]

First, the commenter states that the down-and-in puts sold by the Fund are very short dated (with terms to expiration of only 3 months), European-style (meaning the down-and-in put will only knock in if the price of the underlying stock finishes at or below the knock-in price on the expiration

[31] *See* Notice and Registration Statement, *supra* notes 4 and 9.

[32] *See* Order Instituting Proceedings, *supra* note 7, at 4925–6.

[33] *See* Rich Letter, *supra* note 8.

[34] *Id.* at 3.

[35] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[36] *See* Rich Letter, *supra* note 8, at 6.

[37] *Id.* at 7–9.

[38] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[39] *See* Rich Letter, *supra* note 8, at 9.

[40] *Id.* at 9–10. *See also* ''Suitability'' *supra.*

[41] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[42] *See* Rich Letter, *supra* note 8, at 10.

[43] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[44] *See* Rich Letter, *supra* note 8, at 10.

[45] *Id.* at 11–12.

[46] *See* Order Instituting Proceedings, *supra* note 7, at 4925–6.

[47] *See* Rich Letter, *supra* note 8, at 12–16.

date of the option), and have very liquid underlying stocks with exchange traded options on those underlying stocks.[48] The commenter states that there is a well-known model for pricing European-style, very short dated down-and-in puts using pricing inputs easily obtained from the listed option and stock markets.[49] In addition, the commenter states that the down-and-in puts in the Fund may also be priced without an explicit model through the use of plain vanilla puts and put spreads.[50] The commenter notes that the OTC market for barrier options is the largest exotic option OTC market.[51] Furthermore, the commenter states that the Fund will provide to the public on its Web site the model used to calculate the down-and-in put option values used by the Index provider and its calculation agent, with detailed explanations of the formula calculation and inputs.[52]

In addition, with respect to the ability of market makers and authorized participants to engage in arbitrage, the commenter further states that initially, many market makers will be associated with the dealers buying and selling the down-and-in put options from and to the Fund, and therefore these market makers will have the necessary infrastructure and knowledge to price, make markets in, and hedge their positions in the Shares throughout the trading day.[53] The commenter also states that authorized participants only clear the Shares when there are creates or redeems and do not arbitrage throughout the day to ensure that prices of the Shares closely track the NAV per Share of the Fund.[54] The commenter states that the only situation in which significant discounts or premiums to the intraday NAV per Share of a Fund could develop is when a large number of the down-and-in put options in the Fund are close to maturity and the underlying stock price is very close to the knock-in barrier.[55] The commenter states that such a situation would cause market makers to widen bid and offer spreads for the Shares as a reflection of the economics of the down-and-in put option possible payout.[56]

In the Order Instituting Proceedings, the Commission requested comment on ways for market makers and authorized participants to arbitrage the value of a down-and-in put option against the price of the Shares.[57] The commenter responds that in many cases, the purchase and sale of specific listed options would be an effective way for market makers to arbitrage the value of the down-and-in put options against the price of the Shares because the down-and-in puts written by the Fund will be European-style.[58] Therefore, the purchase or sale of the down-and-in puts written by the Fund may be efficiently hedged by selling or purchasing a static portfolio of listed puts and put spreads, and such a strategy would be most effective when the listed options have the same maturity date as the down-and-in put, option in the Fund, when the strike prices of the listed options are very close to the knock-in price of the down-and-in put option in the Fund, and when the available listed options have strikes relatively close to one another[59] When this is not the case, however, the commenter states that hedging with a static portfolio of listed puts and put spreads may not be the most efficient hedging methodology, and using a dynamic portfolio of options and stock to hedge may be more efficient and effective.[60]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1 thereto, and finds that it is consistent with the requirements of Section 6 of the Act[61] and the rules and regulations thereunder applicable to a national securities exchange.[62] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[63] 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 Fund 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,[64] 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 Index value and the values of the OTC put options components in the Index will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time). A list of components of the Index, with percentage weightings, will be available on the Exchange's Web site. Each of the stocks underlying the OTC put options in the Index also will underlie standardized options contracts traded on U.S. options exchanges, which will disseminate quotation and last-sale information with respect to such options contracts. In addition, an Intraday Indicative Value (''IIV'') for the Shares will be widely disseminated at least every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[65] The Fund's portfolio holdings, including information regarding its options positions, will be disclosed each day on the Fund's Web site, which Web site information will be publicly available at no charge.[66] The Fund's NAV per Share will be determined once daily as of the close of the NYSE (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for trading. BNY, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on NYSE Arca (currently

[48] *Id.*

[49] *Id.* at 13–16.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.*

[55] *Id.* at 15.

[56] *Id.* at 17.

[57] *See* Order Instituting Proceedings, *supra* note 7, at 4925.

[58] *See* Rich Letter, *supra* note 8, at 14.

[59] *Id.*

[60] *Id.*

[61] 15 U.S.C. 78f.

[62] 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).

[63] 15 U.S.C. 78f(b)(5).

[64] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[65] *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 IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157.

[66] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio.

9:30 a.m., Eastern Time), the amount of cash to be deposited in exchange for a Creation Unit [67] and the amount of cash that will be paid by the Fund in respect of redemption requests. 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 information for the Shares will be published daily in the financial section of newspapers. The Fund's Web site will also include a form of the prospectus for the Fund, 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 will be calculated daily and will be made available to all market participants at the same time.[68] If the IIV, the Index value, or the value of the components of the Index 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 IIV, Index value, or value of the components of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[69] In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares 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 Index Provider is affiliated with a broker-dealer and will implement a firewall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Exchange further states that the Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.[70] The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Commission notes that, prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin.[71] Specifically, the Exchange will remind ETP Holders that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

As described above, the Fund will seek to track the performance of the Index by selling OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. If the option's underlying stock declines by a specified amount (or more), the option will ''knock in'' and the Fund will be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a put option, the Fund will be exposed to the amount by which the price of the underlying stock is less than the strike price. FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[72] While the Fund will not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund will have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Information Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

The Registration Statement states that the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. It further

[67] Creation Units (100,000 Shares) of the Fund generally will be sold for cash only, calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, plus a transaction fee.

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

[69] 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. Trading in Shares of the 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 Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[70] 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 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.

[71] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

[72] NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

states that because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks will decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered as a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

The Index will consist of 20 OTC down-and-in put options, selected in accordance with NYSE Arca's rules-based methodology, and the stocks underlying the put options must be U.S. exchange-listed and must also underlie exchange-listed and traded options. In addition, the stocks underlying the down-and-in put options contained in the Index must meet minimum market capitalization and trading volume requirements as described above. The diversification of the Index (20 components) and the nature of the market for the underlying securities (largest capitalized stocks with minimum trading volume requirements) should serve to mitigate concerns about manipulation. In addition, the Commission did not receive any comments or information questioning or expressing concern about manipulation or the ability of market makers to perform intraday arbitrage on a product whose underlying holdings include positions in down-and-in put options, such as the Fund. Furthermore, as stated by the Sub-Adviser, the availability of listed equity options on the securities underlying the down-and-in put options contained in the Index should mitigate concerns regarding the ability of market makers to arbitrage the value of the down-and-in put options against the price of the Shares.[73]

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 Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of OTC put options.

(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. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading, the Exchange will inform its 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 IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV 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. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) The Index will consist of 20 OTC put options, selected in accordance with NYSE Arca's rules-based methodology, and the Fund, under normal circumstances, will invest at least 80% of its total assets in the components of the Index and in T-Bills. Each option written by the Fund will be covered through investments in three month T-Bills at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price). A total return level for the Index will be calculated and published at the end of each day. The Fund will transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

(6) The stocks underlying the Index Components must be U.S. exchange listed and must meet the following additional criteria: (a) The availability of publicly listed and traded options; (b) minimum market capitalization of greater than $5 billion; (c) minimum trading volume of at least 50 million shares during the preceding 6 months; (d) minimum average daily trading volume of at least one million shares during the preceding 6 months; and (e) minimum average daily trading value of at least $10 million during the preceding 6 months.

(7) The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities. In addition, the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

(9) Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills.

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

(11) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[74] as provided by NYSE Arca Equities Rule 5.3.

The Commission further notes that the Fund and the Shares must comply with all other requirements as set forth in Exchange rules applicable to Investment Company Units and prior Commission releases relating to, and orders approving, the generic listing rules (and amendments thereto) 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 Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[75] and the rules and

[73] *See* Rich Letter, *supra* note 8, at 12–16.

[74] 17 CFR 240.10A–3.

[75] 15 U.S.C. 78f(b)(5).

regulations thereunder applicable to a national securities exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[76] that the proposed rule change (SR–NYSEArca–2012–108) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[77]

Kevin M. O'Neill,

Deputy Secretary.

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[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69376; File No. SR–NASDAQ–2013–063]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7014 and 7018

April 15, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on April 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. 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

NASDAQ is proposing changes to its schedule of fees and rebates for execution of orders for securities priced at $1 or more under Rule 7018, as well as changes to its Qualified Market Maker (''QMM'') and NBBO Setter Incentive Programs under Rule 7014. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on April 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, 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. 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 aspects of such statements.

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

1. Purpose

Designated Retail Orders

In March 2013,[3] NASDAQ introduced new liquidity provider credit tiers for orders designated by a member as Designated Retail Orders. The change was part of an ongoing effort by NASDAQ to use financial incentives to encourage greater participation in NASDAQ by members that represent retail customers.[4] For purposes of the new tiers and credits, a Designated Retail Order is defined as an agency or riskless principal [5] order that originates from a natural person and is submitted to NASDAQ by a member that designates it pursuant to Rule 7018, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. As originally adopted, if a member enters Designated Retail Orders through a market participant identifier (''MPID'') through which (i) at least 90% of the shares of liquidity provided during the month are provided through Designated Retail Orders, *and* (ii) the member accesses, provides, or routes shares of liquidity that represent at least 0.10% of Consolidated Volume [6] during the month, the member would receive a credit of $0.0034 per share executed for Designated Retail Orders that provide liquidity if they are displayed orders. NASDAQ is proposing to modify the criteria for this tier in two respects. First, NASDAQ is removing the 0.10% of Consolidated Volume requirement, such that any member that satisfies the requirement to provide 90% of the shares of liquidity provided through a particular MPID using Designated Retail Orders will be eligible for the $0.0034 per share executed rate. In addition, NASDAQ is proposing an additional means by which a member may receive the $0.0034 per share executed rate. If the member provides shares of liquidity through Designated Retail Orders that represent at least 0.30% of Consolidated Volume, and the member also qualifies for the Penny Pilot Tier 4 Customer and Professional Rebate to Add Liquidity under Chapter XV, Section 2 of the NASDAQ Options Market (''NOM'') rules during the month through one or more of its NOM MPIDs, it will also qualify for the $0.0034 rate. Under a proposed rule change for NOM being filed contemporaneously,[7] a NOM Participant qualifies for the Tier 4 Customer and Professional Rebate if it adds a number of contracts of Customer and Professional [8] liquidity that equals or exceeds 0.5% of total industry customer equity and ETF option average daily volume (''ADV'') during the month.

As is currently the case, Designated Retail Orders not qualifying for the

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR–NASDAQ–2013–042).

[4] The Commission has expressed concern that a significant percentage of the orders of individual investors are executed in over-the-counter markets, that is, at off-exchange markets. Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (Concept Release on Equity Market Structure, ''Concept Release''). In the Concept Release, the Commission recognized the strong policy preference under the Act in favor of price transparency and displayed markets. See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (''Schapiro Speech,'' available on the Commission Web site) (comments of former Commission Chairman on what she viewed as a troubling trend of reduced participation in the equity markets by individual investors, and that a significant percentage of volume in U.S.-listed equities is executed in venues that do not display their liquidity or make it generally available to the public).

[5] To qualify as a Designated Retail Order, a riskless principal order must satisfy the criteria set forth in FINRA Rule 5320.03. These criteria include that that the member maintain supervisory systems to reconstruct, in a time-sequenced manner, all orders that are entered on a riskless principal basis; and the member submits a report, contemporaneously with the execution of the facilitated order, that identifies the trade as riskless principal.

[6] ''Consolidated Volume'' is defined as the total consolidated volume reported to all consolidated transaction plans by all exchanges and trade reporting facilities.

[7] SR–NASDAQ–2013–062 (April 1, 2013).

[8] The term ''Customer'' applies to any transaction that is identified by a Participant for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a broker or dealer or for the account of a Professional. The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48) of the NOM Rules.