

2014. For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁶

Kevin M. O'Neill,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71645; File No. SR-NYSEArca-2013-127]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change Relating to the Listing and Trading of Shares of Nine Series of the IndexIQ Active ETF Trust Under NYSE Arca Equities Rule 8.600

March 4, 2014.

I. Introduction

On November 18, 2013, 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 IQ Long/Short Alpha ETF, IQ Bear U.S. Large Cap ETF, IQ Bear U.S. Small Cap ETF, IQ Bear International ETF, IQ Bear Emerging Markets ETF, IQ Bull U.S. Large Cap ETF, IQ Bull U.S. Small Cap ETF, IQ Bull International ETF, and IQ Bull Emerging Markets ETF (each a "Fund" and collectively, the "Funds"). On November 26, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change was published for comment in the **Federal Register** on December 4, 2013.⁴ The Commission received no comment letters on the proposed rule change. On January 15, 2014, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed

rule change.⁶ This Order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. Each of the Funds is a series of the IndexIQ Active ETF Trust ("Trust"), which is registered under the Investment Company Act of 1940 ("1940 Act").⁸ IndexIQ Advisors LLC ("Adviser") is the investment adviser for the Funds. The Funds are described below. Additional information regarding the Trust, the Fund, 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.⁹

IQ Long/Short Alpha ETF

The Exchange states that the investment objective of the IQ Long/Short Alpha ETF is to seek capital appreciation. Under normal circumstances,¹⁰ at least 80% of the

⁶ See Securities Exchange Act Release No. 71309, 79 FR 3657 (January 22, 2014). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated March 4, 2014 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ The Exchange states that on September 12, 2013, the Trust filed with the Commission an amendment to its registration statement on Form N-1A relating to the Funds (File Nos. 333-183489 and 811-22739) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trusts under the 1940 Act. See Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812-13956) ("Exemptive Order").

⁹ See Notice and Registration Statement, *supra* notes 4 and 8, respectively.

¹⁰ The term "under normal circumstances" includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; and 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. In certain situations or market conditions, a Fund may temporarily depart from its normal investment policies and strategies, provided that the alternative is consistent with the Fund's investment objective and is in the best interest of the Fund. For example, a Fund that typically takes short positions may hold little or no short positions for extended periods, or a Fund may hold a higher than normal proportion

Fund's assets will be exposed to equity securities of U.S. large capitalization companies,¹¹ by investing in exchange-traded funds ("ETFs"), in "Financial Instruments," which are defined as swap agreements, options contracts, and futures contracts with economic characteristics similar to those of the ETFs for which they are substituted, or in both. The Exchange states that all options contracts and futures contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group ("ISG") or a party to a comprehensive surveillance sharing agreement with the Exchange.

To implement its strategy, the Fund will hold long and short positions in ETFs providing exposure to certain sectors. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.¹²

IQ Bear U.S. Large Cap ETF

The Exchange states that the investment objective of the IQ Bear U.S. Large Cap ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers by taking short positions in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will primarily hold short positions in ETFs providing exposure to certain sectors. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear U.S. Small Cap ETF

The Exchange states that the investment objective of the IQ Bear U.S. Small Cap ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization companies¹³ by taking short positions in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will hold short positions in ETFs providing

of its assets in cash in times of extreme market stress.

¹¹ The Exchange states that the Adviser considers "large capitalization companies" to have market capitalizations of at least \$5 billion.

¹² Money market instruments generally are short-term cash instruments that have a remaining maturity of 397 days or less and exhibit high quality credit profiles. These include U.S. Treasury Bills and repurchase agreements.

¹³ According to the Registration Statement, the Adviser will consider "small capitalization companies" to have market capitalizations of between \$300 million and \$2 billion.

⁹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 clarified how certain holdings will be valued for purposes of calculating a fund's net asset value and where investors will be able to obtain pricing information for certain underlying holdings.

⁴ See Securities Exchange Act Release No. 70954 (November 27, 2013), 78 FR 72955 ("Notice").

⁵ 15 U.S.C. 78s(b)(2).

exposure to certain sectors. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear International ETF

According to the Exchange, the investment objective of the IQ Bear International ETF is to seek capital appreciation. To implement this strategy, under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries¹⁴ by taking short positions in ETFs, Financial Instruments, or both. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bear Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bear Emerging Markets ETF is to seek capital appreciation. To implement this strategy, under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries¹⁵ by taking short positions in ETFs, Financial Instruments, or both. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull U.S. Large Cap ETF

The Exchange states that the investment objective of the IQ Bull U.S. Large Cap ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. large capitalization issuers by investing in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will hold long positions in ETFs providing exposure to certain sectors. In addition, the Fund will employ the leverage inherent in the

Financial Instruments to gain exposure to the ETFs in which it invests equal to as much as 200% of the net assets of the Fund. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull U.S. Small Cap ETF

The Exchange states that the investment objective of the IQ Bull U.S. Small Cap ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of U.S. small capitalization issuers by investing in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will hold long positions in ETFs providing exposure to certain sectors. In addition, the Fund will employ the leverage inherent in the Financial Instruments to gain exposure to the ETFs in which it invests equal to as much as 200% of the net assets of the Fund. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull International ETF

According to the Exchange, the investment objective of the IQ Bull International ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in developed market countries by investing in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will hold long positions in ETFs providing exposure to such countries. In addition, the Fund will employ the leverage inherent in the Financial Instruments to gain exposure to the ETFs in which it invests equal to as much as 200% of the net assets of the Fund. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

IQ Bull Emerging Markets ETF

According to the Exchange, the investment objective of the IQ Bull Emerging Markets ETF is to seek capital appreciation. Under normal circumstances, at least 80% of the Fund's assets will be exposed to equity securities of issuers domiciled in emerging market countries by investing in ETFs, Financial Instruments, or both. To implement its strategy, the Fund will hold long positions in ETFs providing exposure to such countries. In addition, the Fund will employ the leverage inherent in the Financial Instruments to gain exposure to the ETFs in which it invests equal to as much as 200% of the net assets of the Fund. The leverage ratio will be uniform across all of the underlying ETFs, such that the relative weights of each sector will stay the same, but the overall exposure of the Fund will be increased. Cash balances arising from the use of short selling and derivatives typically will be held in money market instruments.

Other Investments of the Funds

Each Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis. The instruments in which each Fund may invest include: (1) Short-term obligations issued by the U.S. government; (2) negotiable certificates of deposit ("CDs"), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (3) 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 Ratings Group, Inc., a division of The McGraw-Hill Companies, Inc., or, if unrated, of comparable quality as determined by the Adviser; (4) repurchase agreements (only from or to a commercial bank or a broker-dealer, and only if the purchase is scheduled to occur within seven days or less); and (5) 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. Bankers' acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

Each Fund may, from time to time, invest directly in non-ETF equity securities, including U.S.-listed and non-U.S. listed equity securities, provided that all equity securities in which the Funds may invest will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or

¹⁴ According to the Registration Statement, developed market countries generally include: Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, and the United Kingdom. To the extent that the Adviser believes that countries should be added to or subtracted from the developed markets category, the Adviser may adjust the list of countries accordingly.

¹⁵ According to the Registration Statement, emerging market countries generally will include Brazil, Chile, China, Colombia, the Czech Republic, Egypt, Hungary, India, Indonesia, Malaysia, Mexico, Morocco, Peru, the Philippines, Poland, Russia, South Africa, South Korea, Taiwan, Thailand, and Turkey. To the extent that the Adviser believes that countries should be added to or subtracted from the emerging markets category, it may adjust the list of countries accordingly.

a party to a comprehensive surveillance sharing agreement with the Exchange.

In addition to ETFs, the Funds may invest in other U.S.-listed exchange-traded products including exchange-traded notes.

Certain Funds may use American depositary receipts, European depositary receipts, and Global depositary receipts when, in the discretion of the Adviser, the use of such securities is warranted for liquidity, pricing, timing, or other reasons. No Fund will invest more than 10% of its net assets in unsponsored depositary receipts.

Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.¹⁶

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.¹⁷ 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.

According to the Registration Statement, the strategy of overweighting and underweighting sectors to maximize opportunities for capital appreciation may result in a Fund investing greater than 25% of its total assets, directly or indirectly, through underlying ETFs, in the equity securities of companies operating in one or more sectors. Sectors comprise multiple individual

industries. According to the Registration Statement, a Fund will not invest more than 25% of its total assets, directly or indirectly, through underlying ETFs, in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.¹⁸ This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.

According to the Registration Statement, a Fund may not purchase or sell commodities or commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent the Fund from purchasing, selling, and entering into financial futures contracts (including futures contracts on indices of securities, interest rates, and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates, and currencies), warrants, swaps, forward contracts, foreign currency spot and forward contracts, or other derivative instruments that are not related to physical commodities.

Availability of Information

The Exchange states that the Funds' Web site will include quantitative information for the Funds, updated on a daily basis. This information will include: (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 (the "Bid/Ask Price"),¹⁹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, the Funds will disclose on their Web site

the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.²⁰ On a daily basis, the Funds will disclose on www.indexiq.com for each portfolio security and other financial instrument of the Funds the following information: Ticker symbol, name of security and financial instrument, number of shares (if applicable) and dollar value of each security and financial instrument held in the portfolio, and percentage weighting of each security and financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of each Fund.

The Exchange states that information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares and the ETF shares underlying the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Quotation and last sale information for options contracts will be available via the Options Price Reporting Authority. Information regarding the equity securities and other portfolio securities held by each Fund will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters or any future service provider. Given that any swap used by a Fund will be priced based on underlying securities that are publicly traded, the pricing information for such underlying securities also will be available from the national securities exchange trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters or any future service provider. In addition, the

¹⁶ 26 U.S.C. 151.

¹⁷ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618, 14621 n.34 (March 18, 2008). See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

¹⁸ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

¹⁹ The Bid/Ask Price of the Funds will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

²⁰ Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Portfolio Indicative Value of the Funds, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.

Surveillance

The Exchange states that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.²¹ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²²

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

III. Proceedings to Determine Whether to Approve or Disapprove SR–NYSEArca-2013–127 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²³ to determine

²¹ FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

²² For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²³ 15 U.S.C. 78s(b)(2)(B).

whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁴ the Commission is providing notice of the grounds for disapproval under consideration. As discussed above, under the proposal each Fund, under normal market circumstances, would seek to invest (or, as applicable, to take short positions as to) at least 80% of its total assets in ETFs, Financial Instruments, or both. With respect to the Funds, Financial Instruments are swap agreements, options contracts, and futures contracts with economic characteristics similar to those of the ETFs for which they are substituted. In the Notice, the Exchange included a description of the information that would be made available about the Financial Instruments positions in the Disclosed Portfolio.²⁵ Also in the Notice, the Exchange discussed its surveillance of the listing and trading of the Shares on the Exchange. The Commission believes that the proposed rule change raises issues regarding the sufficiency of the information that would be included in the Disclosed Portfolio to price the over-the-counter (“OTC”) derivative instruments, and the impact of those OTC derivatives on arbitrage and hedging activities.

Accordingly, the Commission is instituting proceedings to allow for additional analysis of the proposed rule change’s consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be “designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”²⁶

²⁴ *Id.*

²⁵ Under NYSE Arca’s rules, “Disclosed Portfolio” means the identities and quantities of the securities and other assets held by the fund that will form the basis for the fund’s calculation of net asset value at the end of the business day. See NYSE Arca Equities Rule 8.600(c)(2).

²⁶ 15 U.S.C. 78f(b)(5).

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 31, 2014. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by April 14, 2014.

The Commission asks that commenters address the sufficiency and merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. In the proposed rule change, the Exchange states that the Funds’ daily disclosure of their holdings, including derivatives, will include the following: Ticker symbol, name of security and financial instrument, number of shares (if applicable) and dollar value of each security and financial instrument held in the portfolio, and percentage weighting of each security and financial instrument in the portfolio. Is this information sufficient for market makers and other market participants to value the Funds’ OTC derivatives? Why or why not? What type of information must be included in Disclosed Portfolio for market participants to be able to value the derivatives positions intraday?

2. The Exchange has not made any assertions regarding the potential

²⁷ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

extensive use of derivatives on impact on the arbitrage mechanism. Will the OTC derivatives held by the Funds negatively impact the arbitrage mechanism? Why or why not?

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-NYSEArca-2013-127 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 Numbers SR-NYSEArca-2013-127. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2013-127 and should be submitted on or before March 31, 2014. Rebuttal comments should be submitted by April 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71641; File No. SR-NSX-2014-05]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Fee and Rebate Schedule To Adopt a New Pricing Model and Make Other Conforming Changes

March 4, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that, on February 25, 2014, National Stock Exchange, Inc. ("NSX" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

The Exchange is proposing to amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1 to: (i) Change the Fee Schedule applicable to executions occurring on the Exchange through the Auto Ex mode of order interaction ("Auto Ex Mode")³ and the Order Delivery mode of order interaction ("Order Delivery Mode")⁴ from the current fee and rebate structure to one that provides for fees for adding liquidity and rebates for removing liquidity (a "taker/maker" pricing model); (ii) in connection with the changes to the fee and rebate structure, eliminate the volume tiers and variable and fixed fees and rebates under Section I. of the current Fee Schedule (Auto Ex Mode) and eliminate the volume tiers

²⁸ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 11.13 (Proprietary and Agency Orders; Modes of Order Interaction), paragraph (b)(1).

⁴ See Exchange Rule 11.13(b)(2).

and rebates for adding liquidity in Order Delivery Mode under Section II. of the current Fee Schedule; and (iii) eliminate the rebate of \$0.0015 per executed share for Double Play Orders⁵ routed to and executed on the CBOE Stock Exchange, Inc. ("CBSX"). The Exchange also proposes to delete the Explanatory Endnotes and move the content of certain Endnotes to the text of the Fee Schedule.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nsx.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 and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

As part of its continuous assessment of the U.S. equity securities markets and the competitive environment in which it operates, the Exchange has in recent months undertaken a series of changes to its Fee Schedule with the goal of maximizing the effectiveness of its business model, providing incentives to Equity Trading Permit ("ETP") Holders⁶ to access the Exchange through both Auto Ex Mode and Order Delivery Mode, and to continue providing a high-quality and cost-effective execution venue.⁷ The Exchange believes that,

⁵ Exchange Rule 11.11(c)(10) defines a Double Play order as a market or limit order that, upon entry, routes to designated away Trading Centers which are approved by the Exchange from time to time without first exposing the order to the NSX Book. A Double Play Order that is not executed in full after routing away receives a new time stamp upon return to the Exchange and is ranked and maintained in the NSX Book in accordance with Rule 11.14(a).

⁶ Exchange Rule 1.5 defines "ETP" as the Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's trading facilities.

⁷ See Exchange Act Release No. 71332 (January 16, 2014); 79 FR 3900 (January 23, 2014); (SR-NSX-