

FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change to waive trade reporting fees under Rule 7710, as described herein, is appropriate in light of the ORF systems issue on March 24, 2015. FINRA does not believe that members should incur fees for the corrective action they were required to take following the ORF systems issue. FINRA believes that this limited waiver results in reasonable fees and financial benefits that are equitably allocated. The financial benefit of the trade reporting fee waiver is available to all firms that reported to the ORF on March 24, 2015 and to all firms that reported trades with an execution date or original report date of March 24, 2015, provided that such reports were received by March 31, 2015. The proposed rule change is reasonable because the waiver of ORF trade reporting fees—and the financial benefit from such waiver—is of limited amount, duration and application, as noted above. Finally, the proposed trade reporting fee waiver does not unfairly discriminate between or among members in that the waiver is available to any such member that reported transactions to the ORF on the relevant dates.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change to waive the trade reporting fees is appropriate in light of the ORF systems issue, which required members to take corrective action and make additional submissions to the ORF. FINRA believes that the limited trade reporting fee waiver would not place an unreasonable fee burden on members, nor confer an uncompetitive benefit to members that have their trade reporting fees waived, in that such waiver would be available for a very limited period and the financial impact of such a waiver would be *de minimis*.

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

Written comments were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>8</sup> and paragraph (f)(2) of Rule 19b-4 thereunder.<sup>9</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2015-007 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-FINRA-2015-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE.,

Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices 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-FINRA-2015-007, and should be submitted on or before May 12, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**

*Secretary.*

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**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 31552; File No. 812-14302]**

### **Voya Retirement Insurance and Annuity Company *et al.*; Notice of Application**

April 15, 2015.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended (the "1940 Act" or "Act").

*Applicants:* Voya Retirement Insurance and Annuity Company ("Voya Retirement"), Voya Insurance and Annuity Company ("Voya Insurance"), ReliaStar Life Insurance Company of New York ("ReliaStar NY"), and Security Life of Denver Insurance Company ("Security Life") (each a "Company" and together, the "Companies"), Variable Annuity Account B of Voya Retirement ("Voya Retirement B"), Variable Annuity Account I of Voya Retirement ("Voya Retirement I"), Separate Account B of Voya Insurance ("Voya Insurance B"), Separate Account EQ of Voya Insurance ("Voya Insurance EQ"), ReliaStar Life Insurance Company of New York Separate Account NY-B ("ReliaStar NY-B"), Security Life Separate Account A1 ("Security Life A1"), Security Life Separate Accounts S-A1 ("Security Life S-A1") (each, an "Account" and

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(2).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

together, the “Accounts”) and Voya Variable Portfolios, Inc. The Companies, the Accounts, and Voya Variable Portfolios, Inc. are collectively referred to herein as the “Applicants.”

**SUMMARY: Summary of Application:**

Applicants seek an order pursuant to section 26(c) of the 1940 Act, approving the substitution of shares issued by certain series of Voya Variable Portfolios, Inc. (the “Replacement Funds”) for shares of certain registered investment companies currently held by subaccounts of the Accounts (the “Existing Funds”), to support certain variable annuity contracts (collectively, the “Contracts”) issued by the Companies.

**DATES:**

*Filing Date:* The application was filed on April 29, 2014, and was amended and restated October 27, 2014, February 23, 2015 and March 31, 2015.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 11, 2015 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Commission: Brent Fields, Secretary, SEC, 100 F Street, NE., Washington, DC 20549–1090.

Applicants: J. Neil McMurdie, Esquire, Senior Counsel, Voya Financial Legal Services, One Orange Way, Windsor, CT 06095.

**FOR FURTHER INFORMATION CONTACT:**

Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840, or Nadya Roytblat, Assistant Chief Counsel at (202) 551–0825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s

Web site by searching for the file number, or for an Applicant using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551–8090.

**Applicants’ Representations**

1. Voya Retirement is the depositor of Voya Retirement B and Voya Retirement I. Voya Insurance is the depositor of Voya Insurance B and Voya Insurance EQ. ReliaStar NY is the depositor of ReliaStar NY–B. Security Life is the depositor of Security Life A1 and Security Life S–A1. Each Company is an indirect, wholly-owned subsidiary of Voya Financial, Inc.<sup>1</sup>

2. Each Account is a “separate account” as defined by Rule 0–1(e) under the 1940 Act and each is registered under the 1940 Act as a unit investment trust. Each of the respective Accounts is used by the Company for which it is a part to support the Contracts that it issues. Each Account is divided into subaccounts, each of which invests exclusively in shares of an Existing Fund or another registered open-end management investment company. The application sets forth the registration statement file numbers for the Contracts and the Accounts.

3. The Contracts are individual variable annuity contracts. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to Commission approval and compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of a registered open-end management investment company held by a subaccount of an Account whenever the Company, in its judgment, determines that the investment in the registered open-end management investment company no longer suits the purpose of the Contract.

4. Voya Variable Portfolios is an open-end management investment company of the series type that is registered with the Commission under the 1940 Act (File No. 811–05173).<sup>2</sup> Shares of the

<sup>1</sup> Prior to September 1, 2014, Voya Retirement was known as ING Life Insurance and Annuity Company and Voya Insurance was known as ING USA Annuity and Life Insurance Company. Prior to April 7, 2014, Voya Financial, Inc. was known as ING U.S. Inc.

<sup>2</sup> Effective May 1, 2014, Voya Variable Portfolios changed its name from ING Variable Portfolios, Inc. The names of the Replacement Funds were also changed as of this date to reflect the rebranding of the investment company.

series are registered under the Securities Act of 1933 (File No. 333–05173).

5. Voya Investments LLC (“Voya Investments”), a registered investment adviser, has overall responsibility for the management of each Replacement Fund.<sup>3</sup> Voya Investments delegates to a sub-adviser the responsibility for day-to-day management of the investments of each Replacement Fund, subject to Voya Investment’s oversight.

6. Applicants propose, as set forth below, to substitute shares of the Replacement Funds for shares of the Existing Funds (“Substitutions”):

Existing fund	Replacement fund
ClearBridge Variable Large Cap Value Portfolio- Class I.	Voya Russell Large Cap Value Index Portfolio- Class I.
Fidelity VIP Equity-Income Portfolio- Initial Class.	Voya Russell Large Cap Value Index Portfolio- Class I.
Fidelity VIP Equity-Income Portfolio- Service 2 Class.	Voya Russell Large Cap Value Index Portfolio- Class S.
Invesco VI Core Equity Fund- Class I.	Voya Russell Large Cap Index Portfolio- Class S.
Invesco VI American Franchise Fund- Class I.	Voya Russell Large Cap Growth Index Portfolio- Class S.
Pioneer Equity Income VCT Portfolio- Class II.	Voya Russell Large Cap Value Index Portfolio- Class S.

7. Applicants state that the investment objectives and investment policies of each Replacement Fund are similar to the corresponding Existing Fund, or each Replacement Fund’s underlying portfolio construction and investment results are similar to those of the Existing Fund, and therefore the fundamental objectives, risk and performance expectations of those Contract Owners with interests in subaccounts of the Existing Funds will continue to be met after the Substitutions.

8. The investment objectives of each Existing Fund and its corresponding Replacement Fund are set out below. Additional information for each Existing Fund and Replacement Fund, including principal investment strategies, principal risks and comparative performance history, can be found in the application.

<sup>3</sup> Effective May 1, 2014, Voya Investments changed its name from ING Investments, LLC.

Existing fund	Replacement fund
ClearBridge Variable Large Cap Value Portfolio seeks long-term growth of capital as its primary investment objective. Current income is a secondary objective.	Voya Russell Large Cap Value Index Portfolio seeks investment results (before fees and expenses) that correspond to the total return (which includes capital appreciation and income) of the Russell Top 200 Value Index.
Fidelity VIP Equity-Income Portfolio seeks reasonable income. The fund will also consider the potential for capital appreciation. The fund's goal is to achieve a yield which exceeds the composite yield on the securities comprising the S&P 500 Index.	Voya Russell Large Cap Value Index Portfolio seeks investment results (before fees and expenses) that correspond to the total return (which includes capital appreciation and income) of the Russell Top 200 Value Index.
Invesco VI Core Equity Fund seeks long-term growth of capital .....	Voya Russell Large Cap Index Portfolio seeks investment results (before fees and expenses) that correspond to the total return (which includes capital appreciation and income) of the Russell Top 200 Index.
Invesco VI American Franchise Fund seeks capital growth. ....	Voya Russell Large Cap Growth Index Portfolio seeks investment results (before fees and expenses) that correspond to the total return (which includes capital appreciation and income) of the Russell Top 200 Growth Index.
Pioneer Equity Income VCT Portfolio seeks current income and long-term growth of capital from a portfolio consisting primarily of income producing equity securities of U.S. corporations.	Voya Russell Large Cap Value Index Portfolio seeks investment results (before fees and expenses) that correspond to the total return (which includes capital appreciation and income) of the Russell Top 200 Value Index.

9. Applicants state that at the time of the Substitutions the overall fees and expenses of the Replacement Funds will be less than those assessed by the Existing Funds and that for two years following the effective date of the Substitutions (“Effective Date”), the net annual expenses of each of the Replacement Funds will not exceed the net annual expenses of each corresponding Existing Fund. The application sets forth the fees and expenses of each Existing Fund and its corresponding Replacement Fund in greater detail.

10. Applicants state that by substituting unaffiliated funds with funds that are advised and subadvised by affiliates of the Companies, the principal purposes of the Substitutions would, among other things: (1) Help implement the Companies’ overall business plan to make the Contracts more competitive (and thus more attractive to customers) and more efficient to administer and oversee; (2) provide the Companies with more influence over the administrative and management aspects of the funds offered through the Contracts, thereby reducing costs and customer confusion; (3) allow each Company the ability to react more quickly to the changes and problems it encounters in its oversight of the funds which are available in its Contracts; (4) allow the Companies to reduce costs by consolidating the administration of the Replacement Funds with its other funds; and (5) allow the Companies to respond to expense, performance and management matters that they have identified in their due diligence review of the funds available through the Contracts.

11. Applicants represent that as of the Effective Date shares of the Existing Funds will be redeemed for cash. The Companies, on behalf of each Existing Fund subaccount of each relevant Account, will simultaneously place a redemption request with each Existing Fund and a purchase order with the corresponding Replacement Fund so that the purchase of Replacement Fund shares will be for the exact amount of the redemption proceeds. Thus, Contract values will remain fully invested at all times. The proceeds of such redemptions will then be used to purchase the appropriate number of shares of the applicable Replacement Fund.

12. The Substitutions will take place at relative net asset value (in accordance with Rule 22c-1 under the 1940 Act) with no change in the amount of any Affected Contract Owner’s contract value, cash value, accumulation value, account value or death benefit or in dollar value of his or her investment in the applicable Accounts. No brokerage commissions, fees or other remuneration will be paid by either the Existing Funds or the Replacement Funds or by Affected Contract Owners in connection with the Substitutions.

13. The Affected Contract Owners will not incur any fees or charges as a result of the Substitutions nor will their rights or the Companies’ obligations under the Contracts be altered in any way. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses, and other fees and expenses. The Substitutions will not cause the

Contract fees and charges currently being paid by Affected Contract Owners to be greater after the Substitutions than before the Substitutions. Moreover, the Substitutions will not impose any tax liability on Affected Contract Owners.

14. As described in the application, after notification of the Substitution and for 30 days after the Effective Date, Affected Contract Owners may reallocate the subaccount value of an Existing Fund to any other investment option available under their Contract without incurring any administrative costs or transfer charges.

15. All Affected Contract Owners affected by the Substitutions were notified of this application by means of supplements to the Contract prospectuses shortly after the date the application was first filed with the Commission. Among other information, the supplements informed Affected Contract Owners that beginning on the date of the supplements, the Companies will not exercise any rights reserved by them under the Contracts to impose restrictions or fees on transfers from an Existing Fund (other than restrictions related to frequent or disruptive transfers) until at least 30 days after the Effective Date.

16. Following the date the order requested by this application is issued, but at least 30 days before the Effective Date, Affected Contract Owners will receive a “Pre-Substitution Notice,” consisting of a second supplement to the Contract prospectuses setting forth the intended Effective Date and advising Affected Contract Owners of their right, if they so choose, at any time during the period beginning 30 days before the Effective Date through at least 30 days

following the Effective Date, to reallocate or withdraw accumulated value in the Existing Fund subaccounts under their Contracts or otherwise terminate their interest therein in accordance with the terms and conditions of their Contracts. If Affected Contract Owners reallocate account value during this 60 day period, there will be no charge for the reallocation of accumulated value from the Existing Fund subaccounts and the reallocation will not count as a transfer when imposing any applicable restriction or limit under the Contract on transfers. Additionally, all Affected Contract Owners will be sent prospectuses of the applicable Replacement Funds at least 30 days before the Effective Date.

17. Within five (5) business days after the Effective Date, Affected Contract Owners will be sent a written confirmation, which will include confirmation that the Substitutions were carried out as previously notified, a restatement of the information set forth in the Pre-Substitution Notice and information showing how the allocation of the Affected Contract Owner's account value before and immediately following the Substitution has changed as a result of the Substitutions.

#### Legal Analysis

1. Applicants request that the Commission issue an order pursuant to section 26(c) of the 1940 Act approving the Substitutions. Section 26(c) requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Section 26(c) requires the Commission to issue such an order if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants submit that the terms and conditions of the Substitutions meet the standards set forth in section 26(c) and assert that the replacement of an Existing Fund with the corresponding Replacement Fund is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. As described in the application, as of the Effective Date of the Substitution, the overall fees and expenses of each Replacement Fund will be less than those of the corresponding Existing Fund and for two years following the Effective Date, the net annual expenses of each Replacement Fund will not exceed the net annual expenses of the corresponding Existing Fund. Applicants further assert that each

Replacement Fund has similar investment objectives and investment strategies as the corresponding Existing Fund, or each Replacement Fund's underlying portfolio construction and investment results are similar to those of the corresponding Existing Fund. Accordingly, Applicants believe that the fundamental investment objectives, risk and performance expectations of the Affected Contract Owners will continue to be met after the Substitutions.

3. Applicants also maintain that Affected Contract Owners will be better served by the Substitutions. Applicants anticipate that the substitution of an Existing Fund with the corresponding Replacement Fund will result in a Contract that is administered and managed more efficiently, and one that is more competitive with other variable products. The rights of Affected Contract Owners and the obligations of the Companies under the Contracts will not be altered by the Substitutions. Affected Contract Owners will not incur any additional tax liability or any additional fees and expenses as a result of the Substitutions.

4. Each of the prospectuses for the Contracts discloses that the issuing Company reserves the right, subject to Commission approval and compliance with applicable law, to substitute shares of another registered open-end management investment company for shares of an open-end management investment company held by a subaccount of an Account.

5. Applicants also assert that the Substitutions do not entail any of the abuses that section 26(c) was designed to prevent. Unlike a traditional unit investment trust where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract Owner with the right to exercise his or her own judgment and transfer account values into other subaccounts. Moreover, the Contracts will offer Affected Contract Owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The Substitution, therefore, will not result in the type of costly forced redemptions that section 26(c) was designed to prevent. Applicants also maintain that the Substitutions are unlike the type of substitutions which section 26(c) was designed to prevent in that by purchasing a Contract, Contract Owners select much more than a particular registered management open-end investment company in which to invest their account values. They also select

the specific type of death benefit and other optional benefits as well as other rights and privileges set forth in the Contracts that will not be changed as a result of the Substitutions.

#### Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless the Companies determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the Substitutions.

2. The Companies or their affiliates will pay all expenses and transaction costs of the Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Contract Owners to effect the Substitutions.

3. The Substitutions will be effected at the relative net asset values of the respective shares in conformity with section 22(c) of the 1940 Act and Rule 22c-1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitutions will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the Substitutions.

5. The rights or obligations of the Companies under the Contracts of Affected Contract Owners will not be altered in any way. The Substitutions will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Effective Date) or the Replacement Fund (after the Effective Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date. Except as described in any market timing/short-term trading provisions of the relevant

prospectus, the Company will not exercise any right it may have under the Contract to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Effective Date through at least 30 days following the Effective Date.

7. All Affected Contract Owners will be notified, at least 30 days before the Effective Date about: (a) The intended substitution of Existing Funds with the Replacement Funds; (b) the intended Effective Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Companies will also deliver, at least 30 days before the Effective Date a prospectus for each applicable Replacement Fund.

8. Companies will deliver to each Affected Contract Owner within five (5) business days of the Effective Date a written confirmation which will include: (a) A confirmation that the Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the Pre-Substitution Notice; and (c) before and after account values.

9. After the Effective Date Applicants agree not to change a Replacement Fund's sub-adviser without first (a) obtaining shareholder approval of the sub-adviser change or (b) Voya Variable Portfolios Inc. determining that it can continue to rely on its manager-of-managers exemptive order.

10. For two years following the Effective Date the net annual expenses of each Replacement Fund will not exceed the net annual expenses of the corresponding Existing Fund as of the Fund's most recent fiscal year. To achieve this limitation, the Replacement Fund's investment adviser will waive fees or reimburse the Replacement Fund in certain amounts to maintain expenses at or below the limit. Any adjustments will be made at least on a quarterly basis. In addition, the Companies will not increase the Contract fees and charges including asset based charges such as mortality expense risk charges deducted from the subaccounts that would otherwise be assessed under the terms of the Contracts for a period of at least two years following the Effective Date.

For the Commission, by the Division of Investment Management, under delegated authority.

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-74728; File No. SR-NASDAQ-2015-013]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change To List and Trade Shares of the AlphaMark Actively Managed Small Cap ETF of ETF Series Solutions

April 15, 2015.

#### I. Introduction

On February 17, 2015, The NASDAQ Stock Market LLC (the "Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> a proposed rule change to list and trade the shares ("Shares") of the AlphaMark Actively Managed Small Cap ETF (the "Fund") of ETF Series Solutions (the "Trust") under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on March 3, 2015.<sup>4</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to list and trade the Shares under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund will be an actively-managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust.<sup>5</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.<sup>6</sup> The Fund is a series of the Trust.

AlphaMark Advisors, LLC will be the investment adviser ("Adviser") to the Fund. Quasar Distributors, LLC (the "Distributor") will be the principal underwriter and distributor of the Fund's Shares. U.S. Bancorp Fund Services, LLC will act as the administrator, accounting agent, and

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Securities Exchange Act Release No. 74377 (February 25, 2015), 80 FR 11502 ("Notice").

<sup>5</sup> The Trust has obtained an order from the Commission granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31469 (February 24, 2015) (File No. 812-14402).

<sup>6</sup> See Post-Effective Amendment No. 43 to the Registration Statement on Form N-1A for the Trust, dated February 4, 2015 (File Nos. 333-179562 and 811-22668).

transfer agent to the Fund. U.S. Bank National Association will act as the custodian to the Fund. The Exchange states that the Adviser is not a broker-dealer, and is not affiliated with any broker-dealer.<sup>7</sup> The Exchange has made the following representations and statements regarding the Fund.<sup>8</sup>

#### Principal Investments

The Fund's primary investment objective is to seek long-term growth of capital. The Fund will pursue its objectives by investing primarily—*i.e.*, at least 80% of its assets under normal market conditions<sup>9</sup>—in a portfolio of equity securities of small cap companies listed on a U.S. exchange.

The Fund defines "equity securities" to include common and preferred stock, American Depositary Receipts ("ADRs"), real estate investment trusts, and ETFs that under normal circumstances invest at least 80% of their net assets in equity securities of small cap companies ("Small Cap ETFs"). The Fund may invest up to 30% of its net assets in foreign equity securities of small cap companies traded on a U.S. exchange as ADRs, which may include companies in emerging markets. The Adviser expects that there will generally be between 25 and 40 stocks in the Fund's portfolio.

The Fund is non-diversified, and therefore may invest a larger percentage of its assets in the securities of a single

<sup>7</sup> See Notice, *supra* note 4, 80 FR at 11503. In addition, the Exchange states that, in the event (a) the Adviser becomes affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio. According to the Exchange, the Adviser has no present intent or arrangement to become affiliated with any broker-dealer, and the Fund does not currently intend to use a sub-adviser. *Id.*

<sup>8</sup> Additional information regarding, among other things, the Fund, the Shares, the Fund's investment objectives, the Fund's strategies, the Fund's holdings, risks, fees and expenses associated with the Shares, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures can be found in the Notice and the Registration Statement. See Notice, *supra* note 4, and Registration Statement, *supra* note 6, respectively.

<sup>9</sup> The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities 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.