

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC-32529; 812-14727]

### UBS ETMF Trust, et al.; Notice of Application

March 10, 2017.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** UBS ETMF Trust (the “Trust”), UBS Asset Management Company (Americas) Inc. (the “Adviser”) and UBS Asset Management (US) Inc. (the “Distributor”).

**SUMMARY OF APPLICATION:** Applicants request an order (“Order”) that permits: (a) Actively managed series of certain open-end management investment companies to issue shares (“Shares”) redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Shares to occur at the next-determined net asset value plus or minus a market-determined premium or discount that may vary during the trading day; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares; and (f) certain series to create and redeem Shares in kind in a master-feeder structure. The Order would incorporate by reference terms and conditions of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (“Reference Order”).<sup>1</sup>

**FILING DATES:** The application was filed on December 14, 2016 and amended on March 1, 2017.

<sup>1</sup> Eaton Vance Management, *et al.*, Investment Company Act Rel. Nos. 31333 (Nov. 6, 2014) (notice) and 31361 (Dec. 2, 2014) (order).

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving 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 April 4, 2017, and should be accompanied by proof of service on 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:** The Commission: Brent J. Fields, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

Applicants: Mark F. Kemper, Esq., 1285 Avenue of the Americas, New York, NY 10019-6028.

**FOR FURTHER INFORMATION CONTACT:** Aaron T. Gilbride, Senior Counsel, at (202) 551-6906 or Holly Hunter-Ceci, Acting Assistant Chief Counsel, at (202) 551-6825 (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

1. The Trust will be registered as an open-end management investment company under the Act and is a statutory trust organized under the laws of Delaware. Applicants seek relief with respect to one Fund (as defined below, and that Fund, the “Initial Fund”). The portfolio positions of each Fund will consist of securities and other assets selected and managed by its Adviser or Subadviser (as defined below) to pursue the Fund’s investment objective.

2. The Adviser, a Delaware corporation, will be the investment adviser to the Initial Fund. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). The Adviser may retain one or more subadvisers (each a

“Subadviser”) to manage the portfolios of the Funds. Any Subadviser will be registered, or not subject to registration, under the Advisers Act.

3. The Distributor is a Delaware corporation and a broker-dealer registered under the Securities Exchange Act of 1934 and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser (included in the term “Distributor”). Any Distributor will comply with the terms and conditions of the Order.

### Applicants’ Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act. The requested Order would permit applicants to offer exchange-traded managed funds. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into, or anticipates entering into, a licensing agreement with Eaton Vance Management, or an affiliate thereof in order to offer exchange-traded managed funds,<sup>2</sup> the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term “Adviser”); and (b) operates as an exchange-traded managed fund as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein (each such company or series and Initial Fund, a “Fund”).<sup>3</sup>

6. Section 6(c) of the Act provides that the Commission may exempt any

<sup>2</sup> Eaton Vance Management has obtained patents with respect to certain aspects of the Funds’ method of operation as exchange-traded managed funds.

<sup>3</sup> All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference herein.

person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

7. Applicants submit that for the reasons stated in the Reference Order: (1) With respect to the relief requested pursuant to section 6(c) of the Act, the relief is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act; (2) with respect to the relief request pursuant to section 17(b) of the Act, the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of each registered investment company concerned and consistent with the general purposes of the Act; and (3) with respect to the relief requested pursuant to section 12(d)(1)(J) of the Act, the relief is consistent with the public interest and the protection of investors.

By the Division of Investment Management, pursuant to delegated authority.

**Eduardo A. Aleman,**  
Assistant Secretary.

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80212; File No. SR-ISE-2017-18]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Liability Caps and Related Reimbursement Requirements

March 10, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2017, the International Securities Exchange, LLC (“ISE” 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 705 (Limitation of Liability) to harmonize its liability caps and related reimbursement requirements with those of NASDAQ BX, Inc. (“BX”), NASDAQ PHLX LLC (“Phlx”) and NASDAQ Stock Market LLC (“NSM” and together with BX and Phlx, the “Nasdaq Exchanges”).

The text of the proposed rule change is available on the Exchange’s Web site at [www.ise.com](http://www.ise.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 aspects of such statements.

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

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

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

##### 1. Purpose

The purpose of this proposed rule change is to amend Rule 705 (Limitation of Liability) to harmonize the Exchange’s existing liability caps and related reimbursement requirements for claims under Rule 705(d) with the caps and requirements set forth in the rules of the Nasdaq Exchanges.<sup>3</sup> The Exchange and its affiliates, ISE Gemini, LLC and ISE Mercury, LLC (together, the “ISE Exchanges”), were recently acquired (the “Acquisition”) by Nasdaq, Inc. (“HoldCo”).<sup>4</sup> In the context of the Acquisition, the ISE Exchanges are working to align certain rules with rules of the Nasdaq Exchanges in order to provide consistent standards across the six exchanges operated by HoldCo (the “HoldCo Affiliated Exchanges”). As part of this effort, the proposal set forth below harmonizes the Exchange’s liability caps and the related reimbursement requirements with those of the Nasdaq Exchanges in order to provide uniform standards and requirements for users of the HoldCo Affiliated Exchanges.<sup>5</sup>

Rule 705 in its current form generally states that the Exchange is not liable for any losses due to the Exchange’s negligence or unintentional actions, but also provides in Rule 705(d) that notwithstanding this general limitation on liability, the Exchange may compensate its members for losses resulting directly from the malfunction of the Exchange’s physical equipment, devices and/or programming. Subsections (d)(1)–(d)(3) of Rule 705 contains express conditions governing the voluntary payments made by the Exchange under these limited circumstances. Specifically, the Exchange’s payments for any and all system failures on a single trading day are capped at \$250,000 under subsection (d)(1). The rule text states that for the aggregate of all claims made by all market participants related to the use of the Exchange on a single trading day, the Exchange’s payments shall not exceed \$250,000. Subsection (d)(2) further provides that if the cumulative claims exceed the \$250,000 cap, this

<sup>3</sup> See BX Rule 4626(b) and Phlx Rule 1015. See also NSM Rule 4626(b).

<sup>4</sup> See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISEGemini-2016-05; SR-ISEMercury-2016-10).

<sup>5</sup> ISE Gemini, LLC and ISE Mercury, LLC will each file a proposed rule change with the Commission to adopt similar requirements.