

its back-up data center. Moreover, the Commission notes that such additional requirements will be imposed only on Designated BCP/DR Participants, which are market participants that the Exchange has determined that, taken as a whole, are necessary for the maintenance of fair and orderly markets in the event of the activation of the Exchange's business continuity and disaster recovery plans pursuant to Regulation SCI.<sup>24</sup> The Commission believes that, through the adoption of this rule, Designated BCP/DR Participants will be on notice that they might be called upon to meet heightened quoting obligations up to the levels currently required for Designated Primary Market-Makers in CBOE Rule 8.85(a)<sup>25</sup> during unusual circumstances when the back-up data center is in use and notes that the Exchange would provide specific notice prior to invoking this new authority. The Commission further notes that, as described above, Regulation SCI requires the Exchange to have business continuity and disaster recovery plans reasonably designed to achieve two-hour resumption of critical SCI systems and next business day resumption of trading,<sup>26</sup> and the Exchange represented that its procedures are reasonably designed to achieve two-hour resumption of all trading systems that are essential to conducting business on the exchange and that they are designed to support resumption in a significantly shorter amount of time.<sup>27</sup> As such, the additional requirements imposed by this provision should be in effect for relatively short periods of time if they are ever invoked. In addition, to the extent the Exchange invokes this authority when necessary to support fair and orderly markets when its systems are in back-up mode, then the additional requirements may help support quote activity during a disruption and thereby may help protect investors and the public interest.

The Commission believes that the Exchange's ability to temporarily operate in an exclusively floor-based environment via open outcry in certain proprietary and exclusively-licensed products if the Exchange's primary and back-up data centers become inoperable

or otherwise unavailable could help ensure that the market for these securities would continue to be available and functioning, which should protect investors by providing the ability to continue to trade these products until such time as the Exchange can resume normal trading. The Commission notes that this provision would be invoked only if the Exchange's primary and back-up data centers were both inoperable or otherwise unavailable due to a significant systems failure, disaster, or other unusual circumstances, and will only apply to the Exchange's exclusively-licensed and proprietary products, which only trade on CBOE and, in some instances, its affiliated exchanges. The Commission notes that the period of operation for this exclusively floor-based environment should be minimal based on Regulation SCI's requirements and the Exchange's two-hour resumption standard for its trading systems.<sup>28</sup>

The Commission believes that the Exchange's ability to temporarily deactivate certain non-core systems or systems functionalities in the event of a systems disruption or malfunction, security intrusion, systems compliance issue, or other unusual circumstances could help prevent systems issues from spreading and potentially causing harm to investors or impeding the Exchange's ability to maintain fair and orderly markets. The Commission notes that this authority will only extend to those systems not essential to conducting business on the Exchange. The Commission further notes that the new rule provides that the Exchange will notify market participants of any such deactivation and any subsequent reactivation promptly.

The Commission believes that the Exchange's ability to temporarily restrict a Trading Permit Holder's or associated person's access to the Hybrid Trading System or other electronic trading system as provided in the rule is designed to allow the Exchange to prevent a Trading Permit Holder's systems issues from spreading across the Exchange's systems and potentially causing a more widespread problem implicating the Exchange's ability to maintain fair and orderly markets and thus potentially impacting other market participants. The Commission believes that this connectivity restriction is consistent with Section 6(b)(7) of the Act,<sup>29</sup> as the proposed limitation on access is exceptionally limited in

duration and the rule provides a fair procedure for imposing such restrictions. Specifically, the Commission notes that the Exchange's authority under this provision is limited to when, due to a systems issue, a Trading Permit Holder's activity poses a present threat to the Exchange's ability to operate systems essential to maintaining a fair and orderly market. The Commission also notes that the decision to restrict access would be made by the highest levels of Exchange management, namely the President (or his or her senior-level designee), and this restriction would be temporary, lasting only until the end of the trading session or such earlier time that it is determined by the President, in consultation with the affected Trading Permit Holder, that the access no longer poses a threat. Consistent with the Exchange's representations, the Commission expects that the Exchange would make reasonable efforts to contact the affected Trading Permit Holder immediately before, or, if that is not possible, contemporaneously with, any restriction of access.<sup>30</sup>

Accordingly, for the reasons discussed above, the Commission believes that the Exchange's proposal is consistent with the Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>31</sup> that the proposed rule change (SR-CBOE-2017-044) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-15630 Filed 7-25-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32738; 812-14763]

### Point Bridge Capital, LLC, et al.

July 21, 2017.

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

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and

<sup>24</sup> See Notice, *supra* note 3, at 26826 n. 7.

<sup>25</sup> These heightened quoting obligations could include providing continuous electronic quotes in up to the lesser of 99 percent of the non-adjusted option series or 100 percent of the non-adjusted option series minus one call-put pair in classes in which the Designated BCP/DR Participant is already an appointed LMM or Market-Maker. See *supra* note 9.

<sup>26</sup> 17 CFR 242.1001(a)(v).

<sup>27</sup> See *supra* notes 22-23 and accompanying text.

<sup>28</sup> See *supra* notes 26 and 27 and accompanying text.

<sup>29</sup> 15 U.S.C. 78f(b)(7).

<sup>30</sup> See *supra* note 18 and accompanying text.

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> 17 CFR 200.30-3(a)(12).

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)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) index-based series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

**APPLICANTS:** Point Bridge Capital, LLC (the "Initial Adviser"), a Delaware limited liability company that will be registered as an investment adviser under the Investment Advisers Act of 1940 and ETF Series Solutions (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

**FILING DATE:** The application was filed on April 13, 2017, and amended on June 21, 2017.

**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 August 14, 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:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090;  
Applicants: The Initial Adviser, 300

Throckmorton Street, Suite 1550, Fort Worth, Texas 76102; and the Trust, 615 East Michigan Street, 4th Floor, Milwaukee, Wisconsin 53202.

**FOR FURTHER INFORMATION CONTACT:** Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Nadya B. Roytblat, Assistant Director, 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.

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as index exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participating agreement with a broker-dealer that will be registered under the Securities Exchange Act of 1934 ("Exchange Act") (the "Distributor"). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will hold investment positions selected to correspond closely to the performance of an Underlying Index. In the case of Self-Indexing Funds, an affiliated person, as defined in section 2(a)(3) of the Act ("Affiliated Person"), or an affiliated person of an Affiliated Person ("Second-Tier Affiliate"), of the Trust or a Fund, of the Adviser, of any sub-adviser to or promoter of a Fund, or of the Distributor

<sup>1</sup> Applicants request that the order apply to the new series of the Trust and any additional series of the Trust, and any other open-end management investment company or series thereof (each, included in the term "Fund"), each of which will operate as an ETF and will track a specified index comprised of domestic or foreign equity and/or fixed income securities (each, an "Underlying Index"). Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity or any successor thereto, an "Adviser") and (b) comply with the terms and conditions of the application. For purposes of the requested order, a "successor" is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

will compile, create, sponsor or maintain the Underlying Index.<sup>2</sup>

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that effect creations and redemptions of Creation Units in kind and that are based on certain Underlying Indexes that include foreign securities, applicants request relief from the requirement imposed by section 22(e) in order to allow such

<sup>2</sup> Each Self-Indexing Fund will post on its Web site the identities and quantities of the investment positions that will form the basis for the Fund's calculation of its NAV at the end of the day. Applicants believe that requiring Self-Indexing Funds to maintain full portfolio transparency will help address, together with other protections, conflicts of interest with respect to such Funds.

Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those investment positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>3</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

<sup>3</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if 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 12(d)(1)(f) 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. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

[FR Doc. 2017-15712 Filed 7-25-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81182; File No. SR-NASDAQ-2017-070]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Qualification Criteria Under the Qualified Market Maker Program at Rule 7014

July 20, 2017.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 10, 2017, 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 the Exchange. The Commission is publishing this notice to

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

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

solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend qualification criteria under the Qualified Market Maker Program at Rule 7014. While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on July 1, 2017.<sup>3</sup>

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 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.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend the Exchange's fees at Rule 7014 to raise the combined Consolidated Volume (adding and removing liquidity) criteria from the current requirement that a QMM have at least 3.5% to now require at least 3.7%, which a QMM must have to be eligible for a \$0.0029 per share executed charge for orders in securities listed on exchanges other than Nasdaq priced at \$1 or more per share that access liquidity on the Nasdaq Market Center.

A QMM is a member that makes a significant contribution to market quality by providing liquidity at the national best bid and offer (“NBBO”) in a large number of stocks for a significant portion of the day.<sup>4</sup> In addition, the

<sup>3</sup> The Exchange initially filed the proposed pricing changes on June 28, 2017 (SR-NASDAQ-2017-066). On July 10, 2017, the Exchange withdrew that filing and submitted this filing. This filing corrects a marking error to the Exhibit 5 and clarifies the statutory basis discussion.

<sup>4</sup> See Rule 7014(d).