

On September 1, 2017, NYSE Arca withdrew the proposed rule change (SR–NYSEArca–2016–176).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–81537; File No. SR–NYSEAMER–2017–07]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Commentary .06 to Rule 980NY To Enhance the Price Protections for Complex Orders Executed on the Exchange

September 6, 2017.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b–4 thereunder,² notice is hereby given that on August 25, 2017, NYSE American LLC (the “Exchange” or “NYSE American”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II 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 adopt Commentary .06 to Rule 980NY (Electronic Complex Order Trading) to enhance the price protections for Complex Orders executed on the Exchange. The proposed rule change is available on the Exchange’s Web site at www.nyse.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 Exchange is proposing to adopt Commentary .06 to Rule 980NY to enhance the price protections applicable to Electronic Complex Orders (or “ECOs”).³

The Exchange currently provides price protection to ECOs, which is designed to prevent the execution of orders at prices that are priced a certain percentage away from the current market and, therefore, are potentially erroneous.⁴ The Exchange proposes an additional price protection that would be another check on whether an ECO’s limit price is correctly aligned to the complex strategy and would reject erroneously priced incoming ECOs (the “Reasonability Checks”).⁵ As discussed herein, the proposed price protections are materially identical to price protections available on other options exchanges, including Nasdaq ISE, LLC (“ISE”).⁶

³ Rule 900.3NY(e) defines a Complex Order as any order involving the simultaneous purchase and/or sale of two or more different option series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing particular investment strategy. Per Rule 980NY, an ECO is a Complex Order that has been entered into the NYSE System for possible execution. See Rule 980NY(a).

⁴ See Commentary .05 to Rule 980NY (providing for the rejection of ECOs that are priced away from the current market by a “Specified Amount,” which Specified Amount varies depending on the smallest MPV of any leg in the ECO) (the “Price Protection Filter” or “Filter”).

⁵ See proposed Commentary .06 to Rule 980NY which would provide that the Exchange would reject any incoming ECO that has a strategy described in paragraphs (a)(1)–(3) of proposed Commentary .06 to Rule 980NY. Because Reasonability Checks would be performed before the Price Protection Filter, the proposed rule text would provide that “[a]ny incoming Electronic Complex Order that passes this Reasonability Check would still be subject to the Price Protection Filter, per Commentary .05(b) of this Rule.” See *id.*

⁶ See e.g., ISE Rule 722, Supplementary Material .07 (Price limits for complex orders and quotes). The Exchange notes that, as discussed herein, the proposed Reasonability Checks are similar to those initially adopted by ISE and do not include a later adopted pre-set value “buffer.” See *infra* nn. 12 [sic] and 15 [sic]. Moreover, because the Exchange does not support ECOs entered as market orders, the

First, the Exchange proposes Commentary .06(a)(1) to Rule 980NY, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a complex strategy where all legs are to sell (buy) if it is entered at a price that is less (more) than the minimum (maximum) price, which is calculated as the sum of the ratio on each leg of the Complex Order multiplied by \$0.01 (–\$0.01) per leg (e.g., an order to sell (buy) 2 calls and sell (buy) 1 put would have a minimum (maximum) price of \$0.03 (–\$0.03)).⁷

For example, an order to sell 2 calls and sell 1 put would have a minimum net credit price of \$0.03. If such an order were entered at a price of \$0.02, it would not be executable, as a price of zero would have to be assigned to one of the legs of the order. As proposed, this order would be rejected.

As another example, if a market participant is entering the following “all sell” complex strategy for a debit:

- Leg A: $100 \times 0.01 - 0.02 \times 100$
- Leg B: $100 \times 0.01 - 0.02 \times 100$
- Order 1: Sell 1 Leg A, Sell 2 Leg B;
Net price: –\$0.03

Result: As proposed, Order 1 would be rejected because it is priced less than the minimum order price of \$0.03. Based on each individual leg trading for at least \$0.01, this complex strategy would never trade at a net credit price of less than \$0.03. Thus, any sell order for this strategy with a limit price less than \$0.03 would be rejected.

If, for example, a market participant is entering the following “all buy” complex strategy:

- Leg A: $100 \times 0.01 - 0.02 \times 100$
- Leg B: $100 \times 0.01 - 0.02 \times 100$
- Order 1: Buy Leg A, Buy 2 Leg B; Net price: –\$0.02

Result: As proposed, Order 1 would be rejected because it is priced greater than the maximum net debit price of –\$0.03 (and only orders priced at –\$0.03 or less would be accepted). Because debit orders are entered into the Exchange System as a negative value, the “maximum” price check for buy orders is effectively a check for the minimum order price. Here, Order 1 @ –\$0.02 would represent an order to buy

Exchange has not adopted price checks related to such orders (which orders ISE supports). See e.g., ISE Rule 722, Supplementary Material .07(c)(1),(3). The Exchange also notes that the Chicago Board Options Exchange, Inc. (“CBOE”) likewise includes complex strategy price checks, which cover more strategies than proposed herein, but are nonetheless designed to accomplish the same goal of avoiding execution of erroneously priced complex orders. See CBOE Rule 6.53C, Interpretations and Policies .08 (Price Check Parameters).

⁷ See proposed Commentary .06(a)(1) to Rule 980NY.

comments/sr-nysearca-2016-176/nysearca2016176.htm.

⁹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

for a net debit price of \$0.02, and therefore would be rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(1) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.⁸

Second, the Exchange proposes Commentary .06(a)(2) to Rule 980NY, pursuant to which, upon entry into the System, the Exchange would reject any incoming order for a vertical spread strategy (*i.e.*, an order to sell a call (put) option and to buy another call (put) option in the same security with the same expiration but at a higher (lower) strike price) when entered with a net debit price of $-\$0.01$ or less.⁹

For example, if a market participant is entering the following vertical call credit spread for a debit:

- *Leg A*: April SPY 240 Call: $100 \times 1.72 - 1.73 \times 100$
- *Leg B*: April SPY 241 Call: $100 \times 1.36 - 1.37 \times 100$
- *Order 1*: Sell 1 Leg A, Buy 1 Leg B; Quantity: 50; Net price: $-\$0.35$

Result: As proposed, Order 1 would be rejected because it is priced less than or equal to $-\$0.01$ (*i.e.*, it has a negative limit price). The Exchange notes that the lower strike call will always be more expensive than the higher strike call within the same expiration.¹⁰ Thus, entering this sell order with a negative limit price would result in it being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(2) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.¹¹

⁸ See Securities Exchange Act Release No. 71406 (January 27, 2014), 79 FR 31372, 31373 (January 31, 2014) (SR-ISE-2014-05) (“ISE Price Reasonability Filing”) (adopting “minimum net price” protection feature, providing that the ISE system would “reject any complex order strategy where all legs are to buy if it is entered at a price that is less than the minimum price, which is calculated as the sum of the ratio on each leg of the complex order multiplied by \$0.01 per leg (*e.g.*, an order to buy 2 calls and buy 1 put would have a minimum price of \$0.03”).

⁹ See proposed Commentary .06(a)(2) to Rule 980NY.

¹⁰ The principle behind this check is based on the standard trading principle of “buy low, sell high.” The ability to buy stock at a lower price is more valuable than the ability to buy stock at a higher price, and thus a call with a lower strike price has more value, and thus is more expensive, than a call with a higher strike price. Similarly, the ability to sell stock at a higher price is more valuable than the ability to sell stock at a lower price, and thus a put with a higher strike price has more value, and thus is more expensive, than a put with a lower strike price.

¹¹ See *supra* note 9 [sic], ISE Price Reasonability Filing (providing that, subject to certain limitations, the ISE system would “reject a vertical spread order (*i.e.*, an order to buy a call (put) option and to sell another call (put) option in the same security with

the same expiration but at a higher (lower) strike price) when entered with a net price of less than zero”). The Exchange notes that ISE amended Supplementary Material .07(c)(1) to ISE Rule 722 to add a “pre-set value” less than zero to allow a buffer within which certain orders would not be rejected. See, *e.g.*, See Securities Exchange Act Release No. 72254 (May 27, 2014), 79 FR 31372, 31373 (June 2, 2014) (SR-ISE-2014-26) (“ISE Price Reasonability Modification Filing”). The Exchange has opted to hard code the reject value as $-\$0.01$, which aligns with the ISE Price Reasonability Filing and, would nonetheless operate in a manner similar to ISE’s current rule, notwithstanding the “buffer.”

For example, if a market participant is entering the following calendar credit spread for a debit:

- *Leg A*: May SPY 240 Call: $100 \times 3.41 - 3.43 \times 100$
- *Leg B*: April SPY 240 Call: $100 \times 1.72 - 1.73 \times 100$
- *Order 1*: Sell 1 Leg A, Buy 1 Leg B; Quantity: 50; Net price: $-\$1.68$

Result: As proposed, Order 1 would be rejected because it is priced less than or equal to $-\$0.01$. The Exchange notes that the further out expiring call being sold will always be more expensive than a nearer expiring call being bought at the same strike price, and should always generate a credit.¹³ Thus, any order to sell the far expiration and buy the near expiration entered with a price of -0.01 or less would result in this order being rejected.

The Exchange notes that the price check in proposed Commentary .06(a)(3) to Rule 980NY is materially identical to price protections available on at least one other options exchange, ISE.¹⁴

the same expiration but at a higher (lower) strike price) when entered with a net price of less than zero”). The Exchange notes that ISE amended Supplementary Material .07(c)(1) to ISE Rule 722 to add a “pre-set value” less than zero to allow a buffer within which certain orders would not be rejected. See, *e.g.*, See Securities Exchange Act Release No. 72254 (May 27, 2014), 79 FR 31372, 31373 (June 2, 2014) (SR-ISE-2014-26) (“ISE Price Reasonability Modification Filing”). The Exchange has opted to hard code the reject value as $-\$0.01$, which aligns with the ISE Price Reasonability Filing and, would nonetheless operate in a manner similar to ISE’s current rule, notwithstanding the “buffer.”

¹² See proposed Commentary .06(a)(3) to Rule 980NY.

¹³ The principle behind this check is based on the general concept that locking in a price further into the future involves more risk for the buyer and seller and thus is more valuable, making an option (call or put) with a farther expiration more expensive than an option with a nearer expiration. This is similar, for example, to interest rates for mortgages: In general, an interest rate on a 30-year mortgage is higher than the interest rate on a 15-year mortgage due to the risk of potential interest rate changes over the longer period of time to both the mortgagor and mortgagee.

¹⁴ See, *e.g.*, ISE Rule 722, Supplementary Material .07(c)(3) (providing, in part, that the ISE system will “reject a calendar spread order (*i.e.*, an order to buy a call (put) option with a longer expiration and to sell another call (put) option with a shorter expiration in the same security at the same strike price) when entered with a net price of less than zero (minus a pre-set value).” See also *supra* note 12 [sic], ISE Price Reasonability Modification Filing (adopting ISE Rule 722, Supplementary Material

Regarding calendar spread orders, the Exchange also proposes to retain discretion to deactivate this price check in the interest of fair and orderly markets.¹⁵ For example, the Exchange may deactivate this price check if there is a corporate action in a complex symbol that would result in an otherwise valid strategy being rejected by the proposed check.¹⁶ The Exchange believes this discretion to deactivate the Reasonability Check would be consistent with its obligation to assure a fair and orderly market, and that the need for such flexibility is recognized in other Exchange rules, such as those related to position limits, quote-width differentials and price protection filters.¹⁷ As proposed, the Exchange would announce by electronic message to ATP Holders that request to receive such messages if the Exchange deactivates (and later reactivates) the Reasonability Check for calendar spread orders.

Further, the Exchange does not propose to apply the Reasonability Check on calendar orders entered on the Trading Floor, as such orders are subject to manual handling by individuals who will have evaluated the price of an order based on then-market conditions.¹⁸ The Exchange notes that other exchanges that offer price protections similar to those proposed for calendar spreads have similarly retained discretion to limit the application of this check.¹⁹

The Exchange notes that ECOs that are not rejected by the Reasonability Checks would still be subject to the Price Protection Filter.²⁰

.07(c)(2)). Rather than utilize a “pre-set value” (or buffer), the Exchange has opted to hard code the reject value as $-\$0.01$. See *id.*

¹⁵ See proposed Commentary .06(a)(3)(i) to Rule 980NY.

¹⁶ The Exchange has not similarly retained discretion to deactivate the Reasonability Checks for minimum price and vertical spreads because corporate actions will not create a scenario where a lower strike call would be cheaper than a higher strike call, or a higher strike put would be cheaper than a lower strike put.

¹⁷ See, *e.g.*, Rules 904 (regarding position limits); 925NY (regarding maximum quotation spreads); 967NY (regarding price protection for orders); 925.1NY (regarding price protection for Market Maker quotes) and Commentary .05 to Rule 980NY (regarding the Price Protection Filter for ECOs).

¹⁸ See proposed Commentary .06(a)(3)(i) to Rule 980NY.

¹⁹ See, *e.g.*, CBOE Rule 6.53C, Interpretations and Policies .08(c)(6) (excluding from debit/credit reasonability checks “orders routed from a PAR workstation or order management terminal” because such orders would be subject to manual handling). The Exchange notes that CBOE’s exclusion of complex orders entered on the floor from its debit/credit reasonability checks is not limited to calendar spreads but applies to all such orders entered from the floor of the CBOE.

²⁰ See proposed Commentary .06(b) to Rule 980NY; see also *supra* note 6 [sic].

Implementation

The Exchange will announce by Trader Update the implementation date of the proposed rule change within 90 days of the effective date of this rule filing.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),²¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes the proposed Reasonability Checks would protect investors and the public interest and maintain fair and orderly markets by mitigating potential risks associated with market participants entering Complex Orders at clearly unintended prices that are inconsistent with their strategies. Specifically, a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. The Exchange believes it is reasonable to reject such orders upon entry as they are not executable. Allowing such orders to be entered would create investor confusion; as such orders would not receive an execution and would remain pending until canceled. Similarly, the Exchange believes that rejecting orders for vertical spread strategies—as well as calendar spread strategies—that are entered at a negative price also protects investors from executing orders that were likely entered in error.

Regarding orders for calendar spreads, the Exchange recognizes that it may not be appropriate to apply the Reasonability Checks to calendar spreads in unusual market conditions, such as corporate actions that result in changes in price to the underlying security.²³ The Exchange therefore believes it would remove impediments and perfect the mechanism of a free and open market and a national market system for the Exchange to temporarily deactivate the checks in the event of unusual market conditions, which flexibility is consistent with other exchange rules.²⁴ Further, the Exchange

also recognizes that the applicable protections are not appropriate for orders entered manually on the Trading Floor, because such orders would be subject to an additional check of then-market conditions by the individual entering the order, which flexibility is consistent with the rules of other exchanges.²⁵

The Exchange's proposed Reasonability Checks are similar to similar protections offered on other options exchanges, including ISE. To the extent there are differences between the proposed Reasonability Checks, as described above (*see supra* notes 12 [sic] and 15 [sic]), the Exchange does not believe such differences raise any new or significant policy concerns. Further, despite the differences, the proposed Reasonability Checks would otherwise operate in a similar manner to the checks on ISE. As such, the Exchange merely desires to adopt functionality that is similar to what already exists on ISE.²⁶ Permitting the Exchange to operate on an even playing field relative to other exchanges that have similar functionality removes impediments to and perfects the mechanism for a free and open market and a national market system.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The proposed Reasonability Checks specify circumstances in which the Exchange would reject certain ECOs in the interest of protecting investors against the execution of erroneous orders or the execution of orders at erroneous prices. As such, the proposal does not impose any burden on competition. To the contrary, the Exchange believes that the proposed Reasonability Checks may foster more competition. Specifically, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. The Exchange's proposed rule change would enhance its ability to compete with other exchanges that already offer similar reasonability checks. Thus, the Exchange believes that this type of competition amongst exchanges is beneficial to the market place as a whole as it can result in enhanced processes, functionality, and technologies. The Exchange further believes that because the proposed rule

change would be applicable to all OTP [sic] Holders and OTP [sic] Firms, it would not impose any burden on intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁷ and Rule 19b-4(f)(6) thereunder.²⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act²⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)³⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE American has asked the Commission to waive the 30-day operative delay. NYSE American believes that waiving the operative delay would protect investors by enabling the Exchange to provide greater protections from potentially erroneous executions and potentially reduce the attendant risks of such executions. As noted above, the proposal provides that a Complex Order strategy where all legs are to sell (buy) will be rejected if it is entered at a price that is less (more) than the minimum (maximum) price. NYSE American notes that such an order is not executable, and that allowing such an order to be entered would create investor confusion because the order would not receive an execution and would remain pending until canceled. Similarly, the Exchange believes that

²⁷ 15 U.S.C. 78s(b)(3)(A).

²⁸ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ 15 U.S.C. 78f(b).

²² 15 U.S.C. 78f(b)(5).

²³ *See supra* note 17 [sic].

²⁴ *See supra* note 18 [sic].

²⁵ *See supra* note 20 [sic].

²⁶ *See supra* note 7 [sic].

rejecting orders for vertical and calendar spread strategies that are entered at a negative price will protect investors from executing orders that were likely entered in error.³¹ The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposed rules are designed to reduce investor confusion and to prevent the entry and execution of erroneously priced ECOs. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.³²

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 change 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. Please include File Number SR-NYSEAMER-2017-07 on the subject line.

³¹ As discussed above, the proposal also allows the Exchange to deactivate the Reasonability Check for calendar spread strategies. The Exchange will notify ATP Holders and ATP Firms by electronic message of any such deactivation or re-activation. The Exchange believes that this discretion is necessary because a corporate action, for example, could result in the Reasonability Check for calendar spread strategies rejecting an otherwise valid strategy. The proposal also provides that the Reasonability Check for calendar spread strategies will not apply to ECOs that are entered on the Trading Floor. The Exchange notes that such orders are subject to manual handling by individuals who will have evaluated the price of the order based on market conditions. The Exchange further notes that another exchange has adopted a similar rule. See note 19, *supra*.

³² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSEAMER-2017-07. 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 the filing 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-NYSEAMER-2017-07 and should be submitted on or before October 3, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32808; File No. 812-14697]

Active Weighting Funds ETF Trust and Active Weighting Advisors LLC

September 6, 2017.

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

ACTION: Notice.

Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A), (B), and (C) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act. The requested order would permit certain registered open-end investment companies to acquire shares of certain registered open-end investment companies, registered closed-end investment companies, business development companies, as defined in section 2(a)(48) of the Act ("BDCs"), and registered unit investment trusts (collectively, "Underlying Funds") that are within and outside the same group of investment companies as the acquiring investment companies, in excess of the limits in section 12(d)(1) of the Act.

APPLICANTS: Active Weighting Funds ETF Trust (the "Trust"), a Delaware statutory trust that will be registered under the Act as an open-end management investment company with multiple series, and Active Weighting Advisors LLC (the "Initial Advisor"), a limited liability company organized under the laws of the state of Delaware that is, or will be, registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on August 31, 2016, and amended on January 13, 2017, and May 25, 2017. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 October 2, 2017, 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: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. Applicants, 490 Royal Lake Drive, Cape Girardeau, MO 63701.

³³ 17 CFR 200.30-3(a)(12).