

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-C2-2016-002, and should be submitted on or before March 17, 2016.

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

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77183; File No. SR-NYSEArca-2016-28]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF Under NYSE Arca Equities Rule 8.600

February 19, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 5, 2016, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 list and trade shares of the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF. The proposed rule change is available on the Exchange's Web site at [www.nyse.com](http://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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600,<sup>4</sup> which governs the listing and trading of Managed Fund Shares:<sup>5</sup> RiverFront

<sup>4</sup> The Commission has previously approved listing and trading on the Exchange of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 66321 (February 3, 2012), 77 FR 6850 (February 9, 2012) (SR-NYSEArca-2011-95) (order approving listing and trading of PIMCO Total Return Exchange Traded Fund); 66670 (March 28, 2012), 77 FR 20087 (April 3, 2012) (SR-NYSEArca-2012-09) (order approving listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

<sup>5</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF, each referred to as a "Fund" and collectively as the "Funds." The Funds are each a series of ALPS ETF Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup> The Funds will be managed by ALPS Advisors, Inc. ("ALPS Advisors" or the "Adviser"). RiverFront Investment Group, LLC ("RiverFront") is the investment sub-adviser for the Funds (the "Sub-Adviser").

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>7</sup> In addition,

<sup>6</sup> The Trust is registered under the 1940 Act. On December 4, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Funds (File Nos. 333-148826 and 811-22175) (the "Registration Statement"). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined below) under the 1940 Act. See Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812-13884) ("Exemptive Order"). The Funds will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

<sup>7</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. The Exchange represents that the Adviser and Sub-Adviser, and their respective related personnel, are subject to Investment Advisers Act Rule 204A-1. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>9</sup> 17 CFR 200.30-3(a)(12).

<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.

Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Each of ALPS Advisors and RiverFront is not registered as a broker-dealer but is affiliated with a broker-dealer. Each of ALPS Advisors and RiverFront has implemented and will maintain a fire wall with respect to its affiliated broker-dealer(s) regarding access to information concerning the composition and/or changes to a Fund portfolio. In the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer affiliate 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 non-public information regarding such portfolio.

#### RiverFront Dynamic US Dividend Advantage ETF

##### Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to seek to provide capital appreciation and dividend income. Under normal market conditions,<sup>8</sup> the Fund will seek to achieve its investment objective by investing at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities of U.S. issuers,<sup>9</sup> with at least 65% of its assets in a portfolio of equity securities of publicly traded U.S. companies with the potential for dividend growth. The equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares

<sup>8</sup> The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which a Fund's investments are made for temporary defensive purposes; 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.

<sup>9</sup> The Fund considers a "U.S. issuer" to be one (i) domiciled or with a principal place of business or primary securities trading market in the United States, or (ii) that derives a substantial portion of its total revenues or profits from the United States.

of real estate investment trusts ("REITs").<sup>10</sup>

In selecting the Fund's portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality and momentum. The Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company's cash as a percentage of the company's market capitalization when determining quality and a security's three month relative price change when determining momentum. Additionally, within a given sector, security selection will emphasize companies offering a meaningful dividend yield premium over alternative investments within that sector. This dividend yield emphasis is subject to quality screens intended to limit exposure to companies whose financial characteristics suggest the potential for dividend cuts. The Sub-Adviser then assigns each qualifying security a score based on its core attributes, including its dividend growth score, and selects the individual securities with the highest scores for investment. In doing so, the Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, the potential for dividend income, and the trading volume of a company's shares in the secondary market.

The Fund may invest in small, mid and large capitalization companies. The Fund may also invest in other exchange-traded funds ("ETFs")<sup>11</sup> and/or exchange-traded closed-end funds

<sup>10</sup> REITs are financial vehicles that pool investors' capital to purchase or finance real estate. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs. Equity REITs invest the majority of their assets directly in real property and derive income primarily from the collection of rents. Equity REITs can also realize capital gains by selling properties that have appreciated in value. Mortgage REITs invest the majority of their assets in real estate mortgages and derive income from the collection of interest payments. REITs are not taxed on income distributed to shareholders provided they comply with the applicable tax requirements.

<sup>11</sup> For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100; and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in leveraged or leveraged inverse ETFs.

("CEFs") which invest in equity securities.

#### RiverFront Dynamic US Flex-Cap ETF

##### Principal Investments

According to the Registration Statement, the investment objective of the Fund will be to seek to provide capital appreciation. Under normal market conditions,<sup>12</sup> the Fund will seek to achieve its investment objective by investing at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in securities of U.S. issuers,<sup>13</sup> with at least 65% of its assets in a portfolio of equity securities of publicly traded U.S. companies. The equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares of REITs.

In selecting the Fund's portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality and momentum. The Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company's cash as a percentage of the company's market capitalization when determining quality and a security's three month relative price change when determining momentum. The Sub-Adviser then assigns each qualifying security a score based on its core attributes and selects the individual securities with the highest scores for investment. In doing so, the Sub-Adviser utilizes its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, and the trading volume of a company's shares in the secondary market.

The Fund may invest in small, mid and large capitalization companies. The Fund may also invest in other ETFs<sup>14</sup> and/or CEFs which invest in equity securities.

##### Non-Principal Investments

While each Fund will, under normal market conditions, principally invest its assets in the securities and financial instruments as described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

A Fund may invest in the following other types of equity securities: Non-

<sup>12</sup> See note 7, *supra*.

<sup>13</sup> See note 8, *supra*.

<sup>14</sup> See note 10, *supra*.

REIT preferred stock, convertible securities,<sup>15</sup> master limited partnerships (“MLPs”)<sup>16</sup> and business development companies (“BDCs”).<sup>17</sup>

According to the Registration Statement, a Fund may invest in equity securities of non-U.S. companies, including issuers in emerging market countries.<sup>18</sup>

According to the Registration Statement, a Fund may also invest in the following short-term instruments on an ongoing basis to provide liquidity or for other reasons: Money market instruments, cash and cash equivalents. Cash equivalents include the following: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (“CDs”),<sup>19</sup> fixed time deposits<sup>20</sup> and bankers’ acceptances of U.S. and foreign banks and similar institutions;<sup>21</sup> (iii) commercial paper rated at the date of purchase “Prime-1” by Moody’s Investors Service, Inc. or “A-1+” or “A-1” by Standard & Poor’s or, if unrated, of comparable quality as determined by the Adviser or Sub-Adviser;<sup>22</sup> (iv)

repurchase agreements;<sup>23</sup> and (v) money market mutual funds.

In addition, according to the Registration Statement, a Fund may use derivative instruments. Specifically, a Fund may use options, futures, swaps and forwards, for hedging or risk management purposes or as part of its investment practices.<sup>24</sup>

According to the Registration Statement, a Fund may enter into the following derivatives: Futures on securities, indices, and currencies and options on such futures; exchange-traded and OTC options on securities, indices, and currencies; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps and credit default swaps; and options on such swaps (“swaptions”).<sup>25</sup> The swaps in which a Fund will invest may be cleared swaps or non-cleared. A Fund may enter into derivatives traded in the U.S. or in non-U.S. countries. A Fund will collateralize its obligations with

liquid assets consistent with the 1940 Act and interpretations thereunder.

According to the Registration Statement, a Fund may invest in forward currency contracts.<sup>26</sup> Currency forward contracts may be used to increase or reduce exposure to currency price movements. At the discretion of the Adviser or Sub-Adviser, the Funds may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates.

A Fund may gain exposure to foreign securities by purchasing U.S. exchange-listed and traded American Depositary Receipts (“ADRs”), exchange-traded European Depositary Receipts (“EDRs”) and Global Depositary Receipts (“GDRs”, together with ADRs and EDRs, “Depositary Receipts”).<sup>27</sup>

According to the Registration Statement, the Funds may invest in Rule 144A restricted securities.<sup>28</sup>

#### Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities that are offered pursuant to Rule 144A under the Securities Act deemed illiquid by the Adviser or Sub-Adviser.<sup>29</sup> Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

<sup>15</sup> Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

<sup>16</sup> MLPs are limited partnerships in which the ownership units are publicly traded. Most MLPs operate in oil and gas related businesses including energy processing and distribution. The remaining MLPs operate in a variety of businesses including coal, timber, other minerals, real estate, and some miscellaneous businesses.

<sup>17</sup> A BDC is an exchange-traded closed-end investment company that more closely resembles an operating company than a typical investment company.

<sup>18</sup> According to the Registration Statement, the Funds consider an “emerging market country” to be any country whose issuers are included in the Morgan Stanley Capital International Emerging Markets Index and/or those countries considered to be developing by the World Bank, the International Finance Corporation or the United Nations. The Funds consider an “emerging market issuer” to be one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

<sup>19</sup> CDs are interest-bearing instruments with a specific maturity issued by banks and savings and loan institutions in exchange for the deposit of funds.

<sup>20</sup> Time deposits are non-negotiable receipts issued by a bank in exchange for the deposit of funds.

<sup>21</sup> Bankers’ acceptances are bills of exchange or time drafts drawn on and accepted by a commercial bank. Corporations use bankers’ acceptances to finance the shipment and storage of goods and to furnish dollar exchange. Maturities are generally six months or less.

<sup>22</sup> Commercial paper consists of short-term, promissory notes issued by banks, corporations and other entities to finance short-term credit needs. These securities generally are discounted but sometimes may be interest bearing. Commercial

paper consists of short-term promissory notes issued primarily by corporations. Commercial paper may be traded in the secondary market after its issuance. As of September 30, 2015, the amount of commercial paper outstanding (seasonally adjusted) was approximately \$1024.1 billion. See <http://www.federalreserve.gov/releases/CP/default.htm>.

<sup>23</sup> A repurchase agreement is an agreement under which a Fund acquires a financial instrument (e.g., a security issued by the U.S. government or an agency thereof, a banker’s acceptance or a certificate of deposit) from a seller, subject to resale to the seller at an agreed upon price and date (normally, the next business day). A repurchase agreement may be considered a loan collateralized by securities. The resale price reflects an agreed upon interest rate effective for the period the instrument is held by a Fund and is unrelated to the interest rate on the underlying instrument. These agreements may be made with respect to any of the portfolio securities in which the Funds are authorized to invest.

<sup>24</sup> Derivative instruments are contracts whose value depends on, or is derived from, the value of an underlying asset, reference rate or index. These underlying assets, reference rates or indices may be any one of the following: Stocks, interest rates, currency exchange rates and stock indices.

The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser or Sub-Adviser reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser or Sub-Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser or Sub-Adviser will review approved counterparties using various factors, which may include the counterparty’s reputation, the Adviser’s or Sub-Adviser’s past experience with the counterparty and the price/market actions of debt of the counterparty.

<sup>25</sup> Options on swaps are traded OTC. In the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

<sup>26</sup> A forward currency contract is an obligation to buy or sell a specified quantity of currency at a specified date in the future at a specified price which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

<sup>27</sup> Depositary Receipts are receipts, typically issued by a bank or trust issuer, which evidence ownership of underlying securities issued by a non-U.S. issuer. Generally, ADRs, in registered form, are denominated in U.S. dollars and are designed for use in the U.S. securities markets. GDRs, in bearer form, are issued and designed for use outside the United States and EDRs, in bearer form, may be denominated in other currencies and are designed for use in European securities markets. ADRs are receipts typically issued by a U.S. bank or trust company evidencing ownership of the underlying securities. EDRs are European receipts evidencing a similar arrangement. GDRs are receipts typically issued by non-United States banks and trust companies that evidence ownership of either foreign or domestic securities. Non-exchange-listed ADRs will not exceed 10% of a Fund’s net assets.

<sup>28</sup> Restricted securities are securities that are not registered under the Securities Act, but which can be offered and sold to “qualified institutional buyers” under Rule 144A under the Securities Act.

<sup>29</sup> Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. According to the Registration Statement, Rule 144A permits certain qualified institutional buyers, such as a Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

liquidity is being maintained,<sup>30</sup> and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>31</sup>

The Funds intend to qualify for and to elect to be treated as separate regulated investment companies ("RICs") under Subchapter M of the Internal Revenue Code.<sup>32</sup>

A Fund's investments will be consistent with a Fund's investment objective and will not be used to enhance leverage. That is, while a Fund will be permitted to borrow as permitted under the 1940 Act, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).<sup>33</sup>

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or party to a comprehensive surveillance sharing agreement

("CSSA") with the Exchange.<sup>34</sup> Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

#### Net Asset Value

According to the Registration Statement, the net asset value ("NAV") per Share of each Fund will be computed by dividing the value of the net assets of each Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management fees, will be accrued daily and taken into account for purposes of determining NAV.

The NAV per Share will be calculated by each Fund's custodian and determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m., Eastern Time) on each day that such exchange is open. Any assets or liabilities denominated in currencies other than the U.S. dollar will be converted into U.S. dollars at the current market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers). Information that becomes known to a Fund or its agents after the NAV has been calculated on a particular day will not generally be used to retroactively adjust the price of a portfolio asset or the NAV determined earlier that day. Each Fund reserves the right to change the time its NAV is calculated if the Fund closes earlier, or as permitted by the Commission.

According to the Registration Statement, the values of each Fund's portfolio securities holdings will be based on market prices. Price information for exchange-traded equity securities, including equity securities of domestic and foreign companies, such as common stock, ETFs and Depositary Receipts (excluding ADRs traded OTC), and preferred securities, will be taken from the exchange where the security or asset is primarily traded. Each Fund's securities holdings that are traded on a national securities exchange will be valued based on their last sale price or, in the case of the NASDAQ, at the NASDAQ official closing price.

Securities regularly traded in an over-the-counter market will be valued at the latest quoted sale price in such market. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Board, as discussed below.

Price information for money market instruments will be available from major market data vendors.

In the absence of a last reported sales price for an exchange-traded security or asset, if no sales were reported, if a market quotation for a security or asset is not readily available or the Adviser or Sub-Adviser believes it does not otherwise accurately reflect the market value of the security or asset at the time a Fund calculates its NAV, the security or asset will be valued based on fair value as determined in good faith by the Adviser or Sub-Adviser in accordance with the Trust's valuation policies and procedures approved by the Board and in accordance with the 1940 Act. A Fund may also use fair value pricing in a variety of circumstances, including but not limited to, trading in a security or asset has been suspended or halted. Fair value pricing involves subjective judgments and it is possible that a fair value determination for a security or asset may be materially different than the value that could be realized upon the sale of the security or asset.

Values may be based on quotes obtained from a quotation reporting system, established market makers or by an outside independent pricing service. Prices obtained by an outside independent pricing service will use information provided by market makers or estimates of market values obtained from data related to investments or securities with similar characteristics and may use a computerized grid matrix of securities and its evaluations in determining what it believes is the fair value of the portfolio securities.

Derivatives for which market quotes are readily available will be valued at market value. Local closing prices will be used for all instrument valuation purposes. Futures will be valued at the last reported sale or settlement price on the day of valuation. Swaps traded on exchanges such as the Chicago Mercantile Exchange ("CME") or the Intercontinental Exchange ("ICE-US") will use the applicable exchange closing price where available. Foreign currency-denominated derivatives will generally be valued as of the respective local region's market close.

With respect to specific derivatives:

<sup>30</sup> In reaching liquidity decisions with respect to Rule 144A securities, the Adviser or Sub-Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>31</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also*, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

<sup>32</sup> 26 U.S.C. 851.

<sup>33</sup> A Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following a Fund's first full calendar year of performance.

<sup>34</sup> *See* notes 48-49, *infra*.

- Currency spot and forward rates from major market data vendors<sup>35</sup> will generally be determined as of the NYSE Close.

- Futures on securities, indices, and currencies will generally be valued at the settlement price of the relevant exchange.

- A total return swap on an index will be valued at the publicly available index price. The index price, in turn, is determined by the applicable index calculation agent, which generally values the securities underlying the index at the last reported sale price.

- Exchange-traded non-equity options (for example, options on bonds, Eurodollar options and U.S. Treasury options), index options, and options on futures will generally be valued at the official settlement price determined by the relevant exchange, if available.

- OTC foreign currency (FX) options will generally be valued by pricing vendors.

- All other swaps such as interest rate swaps, inflation swaps, swaptions, credit default swaps, and CDX/CDS will generally be valued by pricing services.

#### Intra-Day Indicative Value

The approximate value of a Fund's investments on a per-Share basis, the Indicative Intra-Day Value ("IIV"), will be disseminated every 15 seconds during the Exchange Core Trading Session. The IIV should not be viewed as a "realtime" update of NAV because the IIV will be calculated by an independent third party and may not be calculated in the exact same manner as NAV, which will be computed daily. For the purposes of determining the IIV, the third party market data provider's valuation of derivatives is expected to be similar to their valuation of all securities. The third party market data provider may use market quotes if available or may fair value securities against proxies (such as swap or yield curves).

With respect to specific derivatives:

- Foreign currency derivatives may be valued intraday using market quotes, or another proxy as determined to be appropriate by the third party market data provider.

- Futures may be valued intraday using the relevant futures exchange data, or another proxy as determined to be appropriate by the third party market data provider.

- Interest rate swaps and cross-currency swaps may be mapped to a

swap curve and valued intraday based on changes of the swap curve, or another proxy as determined to be appropriate by the third party market data provider.

- Index credit default swaps (such as, CDX/CDS) may be valued using intraday data from market vendors, or based on underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

- Total return swaps may be valued intraday using the underlying asset price, or another proxy as determined to be appropriate by the third party market data provider.

- Exchange listed options may be valued intraday using the relevant exchange data, or another proxy as determined to be appropriate by the third party market data provider.

- OTC options on securities, indices, and currencies and swaptions may be valued intraday through option valuation models (e.g., Black-Scholes) or using exchange-traded options as a proxy, or another proxy as determined to be appropriate by the third party market data provider.

#### Disclosed Portfolio

The Funds' disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Adviser or Sub-Adviser will disclose on the Funds' Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The Web site information will be publicly available at no charge.

#### Impact on Arbitrage Mechanism

The Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities

created by the ability to purchase or redeem Creation Shares at their NAV, which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Adviser does not believe there will be any significant impacts to the settlement or operational aspects of a Fund's arbitrage mechanism due to the use of derivatives. Because derivatives generally are not eligible for in-kind transfer, they will typically be substituted with a "cash in lieu" amount when a Fund processes purchases or redemptions of creation units in-kind.

#### Creation and Redemption of Shares

Shares may be created and redeemed in "Creation Unit" size aggregations of at least 50,000 Shares. The size of a Creation Unit is subject to change. In order to purchase Creation Units of a Fund, an investor must generally deposit a designated portfolio of securities (the "Deposit Securities") (and/or an amount in cash in lieu of some or all of the Deposit Securities) and generally make a cash payment referred to as the "Cash Component." The list of the names and the amounts of the Deposit Securities is made available by the Funds' custodian through the facilities of the NSCC immediately prior to the opening of business each day of the NYSE Arca. The Cash Component represents the difference between the NAV of a Creation Unit and the market value of the Deposit Securities. Creations and redemptions of Shares may only be made through an Authorized Participant, as described in the Registration Statement.

Shares may be redeemed only in Creation Units at their NAV and only on a day the NYSE Arca is open for business. The Funds' custodian will make available immediately prior to the opening of business each day of the NYSE Arca, through the facilities of the NSCC, the list of the names and the amounts of each Fund's portfolio securities that will be applicable that day to redemption requests in proper form ("Fund Securities"). Fund Securities received on redemption may not be identical to Deposit Securities, which are applicable to purchases of Creation Units.

Unless cash redemptions or partial cash redemptions are available or specified for a Fund, the redemption proceeds will consist of the Fund Securities, plus cash in an amount equal to the difference between the NAV of Shares being redeemed as next determined after receipt by the transfer agent of a redemption request in proper

<sup>35</sup> Major market data vendors may include, but are not limited to: Thomson Reuters, JPMorgan Chase PricingDirect Inc., Markit Group Limited, Bloomberg, Interactive Data Corporation or other major data vendors.

form, and the value of the Fund Securities (the “Cash Redemption Amount”), less the applicable redemption fee and, if applicable, any transfer taxes.<sup>36</sup>

#### Availability of Information

The Funds’ Web site ([www.alpsetfs.com](http://www.alpsetfs.com)), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds’ Web site will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior business day’s reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>37</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a

<sup>36</sup> Each Fund may, in certain circumstances, allow cash creations or partial cash creations but not redemptions (or vice versa) if the Adviser or Sub-Adviser believes it will allow a Fund to adjust its portfolio in a manner which is more efficient for shareholders. Each Fund may allow creations or redemptions to be conducted partially in cash only where certain instruments are (i) in the case of the purchase of a Creation Unit, not available in sufficient quantity for delivery; (ii) not eligible for transfer through either the NSCC or DTC; or (iii) not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances. To the extent each Fund allows creations or redemptions to be conducted wholly or partially in cash, such transactions will be effected in the same manner for all Authorized Participants on a given day except where: (i) Such instruments are, in the case of the purchase of a Creation Unit, not available to a particular Authorized Participant in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind. According to the Registration Statement, an additional variable charge for cash or partial cash creations, and cash or partial cash redemptions, may also be imposed to compensate a Fund for the costs associated with buying the applicable securities.

<sup>37</sup> The Bid/Ask Price of each Fund’s Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund’s NAV. The records relating to Bid/Ask Prices will be retained by a Fund and its service providers.

Fund’s calculation of NAV at the end of the business day.<sup>38</sup>

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

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Funds’ Shareholder Reports, and Form N–CSR and Form N–SAR, filed twice a year. The Trust’s SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission’s Web site at [www.sec.gov](http://www.sec.gov). Information regarding market price and trading volume for the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Quotation and last sale information for the Shares, U.S. exchange-traded common stocks, as well as depository receipts (excluding ADRs traded OTC and GDRs), REITs, BDCs, preferred securities, CEFs and ETFs (collectively, “Exchange Traded Equities”) will be available via the Consolidated Tape Association (“CTA”) high-speed line and from the securities exchange on which they are listed. Price information for OTC REITs and OTC common stocks will be available from major market data vendors.

Quotation and last sale information for GDRs will be available from the securities exchange on which they are listed. Information relating to futures and options on futures also will be available from the exchange on which such instruments are traded. Information relating to exchange-traded options will be available via the Options Price Reporting Authority.

Quotation information from brokers and dealers or pricing services will be available for ADRs traded OTC and non-exchange-traded derivatives, including

<sup>38</sup> Under accounting procedures to be followed by the Funds, trades made on the prior Business Day (“T”) will be booked and reflected in NAV on the current Business Day (“T+1”). Accordingly, each Fund will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

forwards, swaps and certain options. Pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

In addition, the IIV, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.<sup>39</sup> The dissemination of the IIV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund.<sup>40</sup> Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca

<sup>39</sup> Currently, the Exchange understands that several major market data vendors display and/or make widely available IIVs taken from CTA or other data feeds.

<sup>40</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3<sup>41</sup> under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio of each Fund will be made available to all market participants at the same time.

#### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.<sup>42</sup>

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures with other markets and other entities that are members of the ISG,<sup>43</sup> and the Exchange, or FINRA on behalf of the Exchange, may obtain trading

information regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Exchange Traded Equities, and certain exchange-traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.<sup>44</sup>

Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

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

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (4) how information regarding the IIV and the Disclosed Portfolio is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin

will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

#### 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>45</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that each of the Adviser and the Sub-Adviser each is affiliated with a broker-dealer and has represented that it has implemented a fire wall with respect to its broker-dealer affiliate(s) regarding access to information concerning the composition and/or changes to the portfolio. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying Exchange Traded Equities, and certain exchange-traded options and futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying Exchange Traded Equities, and certain exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares,

<sup>41</sup> 17 CFR 240.10A-3.

<sup>42</sup> FINRA conducts cross market surveillances of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>43</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a CSSA.

<sup>44</sup> Certain of the exchange-traded equity instruments in which a Fund may invest may trade in markets that are not members of ISG.

<sup>45</sup> 15 U.S.C. 78f(b)(5).



underlying Exchange Traded Equities, and certain exchange-traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.

Each Fund's disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. On a daily basis, the Funds will disclose on a Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. Price information for the equity securities held by a Fund will be available through major market data vendors and on the applicable securities exchanges on which such securities are listed and traded. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of a Fund will be halted if the circuit

breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a CSSA. Not more than 10% of the net assets of a Fund in the aggregate invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a CSSA. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the IIV, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that primarily hold equity securities and will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *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**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSEArca-2016-28 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2016-28. 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–NYSEArca–2016–28 and should be submitted on or before March 17, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016–03944 Filed 2–24–16; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77182; File No. SR–BATS–2016–08]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rules 8.15, Imposition of Fines for Minor Violation(s) of Rules, and 25.3, Penalty for Minor Rule Violations, To Amend the Minor Rule Violation Plan

February 19, 2016.

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 February 10, 2016, BATS Exchange, Inc. (“BZX” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit 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 filed a proposal to amend Rules 8.15 and 25.3 to amend the Exchange's Minor Rule Violation Plan. The Exchange has designated this

proposal as non-controversial and provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.<sup>3</sup>

The text of the proposed rule change is available at the Exchange's Web site at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to amend Rule 8.15 applicable to the Exchange's equity platform (“BZX Equities”) to remove the \$2,500 penalty limitation contained in Rule 8.15(a) in order to modify the permissible penalties for minor rule violations with respect to Rule 25.3 applicable to the BZX options platform (“BZX Options”) and to allow the Exchange the discretion to impose penalties in excess of \$2,500 under both the BZX Equities and BZX Options Minor Rule Violation Plans. The proposal further provides that only fines that do not exceed \$2,500 will not be reported. Fines that exceed \$2,500 will continue to be publicly reported by the Exchange<sup>4</sup> and reported as final in compliance with SEC Rule 19d–1(c).<sup>5</sup>

Further, the Exchange proposes to amend the BZX Options Minor Rule Violation Plan penalty schedule contained in Rule 25.3(d)—for violations of Rule 22.6(d) regarding Market Makers maintaining continuous bids and offers—to aggregate violations of Rule 22.6(d) that occur in a single month of a rolling 24-month period and

sanction such aggregated violations as a single offense. The proposed amended penalty schedule is substantially similar to International Securities Exchange (“ISE”) Rule 1614(d)(11) Minor Rule Violation Plan penalties for continuous options quotation violations.

##### Removal of Penalty Limitation

Rule 25.3 states that the Exchange may proceed under the Minor Rule Violation Plan pursuant to the procedures set forth in Rule 8.15 applicable to BZX Equities. Currently, Rule 8.15(a) states that the Exchange may impose a fine “not to exceed \$2,500” for a minor rule violation. Because existing Rule 25.3 recommends the imposition of penalties in excess of \$2,500 in certain circumstances, the Exchange believes the penalty limitation in 8.15(a) is obsolete, inappropriate, and unnecessarily confusing. Moreover, abiding by the terms of the penalty limitation contained in 8.15(a) for purposes of the BZX Options Minor Rule Violation Plan deprives Rule 25.3 of much of its meaning and effectiveness. Further, it is the Exchange's position that the penalty limitation currently contained in Rule 8.15(a) is also unnecessary because the Exchange must exercise its discretion to opt to proceed under the Minor Rule Violation Plan rather than under its default process, the formal disciplinary process. As a practical matter, if an individual or entity exceeds the prescribed Minor Rule Violation Plan fine threshold of \$2,500, it will oftentimes be appropriate for the Exchange to decline to exercise its discretion to proceed under the Minor Rule Violation Plan and to instead proceed under the formal disciplinary process. The Exchange, however, believes it should have the discretion to elect to proceed under the Minor Rule Violation Plan for a minor rule violation that would otherwise cumulatively exceed \$2,500. Accordingly, the Exchange proposes to eliminate the penalty limitation in Rule 8.15(a).

The Exchange recognizes, however, a fine exceeding \$2,500 must be reported as final in accordance with SEC Rule 19d–1(c),<sup>6</sup> regardless of whether or not it is imposed under the Minor Rule Violation Plan. The Exchange provides, therefore, that only fines that do not exceed \$2,500 will not be reported. Fines that exceed \$2,500 will continue to be reported as final in compliance with SEC Rule 19d–1(c).<sup>7</sup>

<sup>3</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>4</sup> As set forth in Interpretation and Policy .01 to Rule 8.11, except as provided in Rule 8.15(a), the staff shall cause details regarding all formal disciplinary actions where a final decision has been issued to be published on a Web site maintained by the Exchange.

<sup>5</sup> 17 CFR 240.19d–1(c).

<sup>6</sup> 17 CFR 240.19d–1(c).

<sup>7</sup> *Id.*

<sup>46</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.