

fair, and equitable because the these tiers were not providing the desired result of incentivizing Members to increase their participation on the Exchange. As such, the Exchange also believes that the proposed elimination of these tiers would be non-discriminatory in that they currently apply equally to all Members and, upon elimination, would no longer be available to any Members. Further, their elimination will allow the Exchange to explore other pricing mechanisms in which it may enhance market quality for all Members.

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

The Exchange believes the proposed amendment to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe that the proposed change to the Exchange's standard fees, rebates and tiered pricing structure burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of the Exchange.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>24</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>25</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if

it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **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-BatsBZX-2017-23 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-BatsBZX-2017-23. 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-BatsBZX-2017-23 and should be submitted on or before May 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

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

[FR Doc. 2017-08392 Filed 4-25-17; 8:45 am]

BILLING CODE 8011-01-P

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-80496; File No. SR-NYSEArca-2017-42]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.87**

April 20, 2017.

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 April 17, 2017, 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 and II 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 amend Rule 6.87 (Nullification and Adjustment of Options Transactions including Obvious Errors). 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.

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

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

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

<sup>24</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>25</sup> 17 CFR 240.19b-4(f).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

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

1. Purpose

The purpose of this filing is to amend Rule 6.87 relating to the adjustment and nullification of erroneous transactions. This filing is based on a proposal recently submitted by Chicago Board Options Exchange, Incorporated ("CBOE") and approved by the Commission.<sup>4</sup>

Background

Last year, the Exchange and other options exchanges adopted a new, harmonized rule related to the adjustment and nullification of erroneous options transactions, including a specific provision related to coordination in connection with large-scale events involving erroneous options transactions.<sup>5</sup> The Exchange believes that the changes the options exchanges implemented with the new, harmonized rule have led to increased transparency and finality with respect to the adjustment and nullification of erroneous options transactions. However, as part of the initial initiative, the Exchange and other options exchanges deferred a few specific matters for further discussion, including how erroneous Complex Orders and Stock/Option Orders should be handled.<sup>6</sup>

Specifically, the options exchanges have been working together to identify ways to improve the process related to the adjustment and nullification of erroneous options transactions as it relates to Complex Orders and Stock/Option Orders. The goal of the process that the options exchanges have undertaken is to further harmonize rules related to the adjustment and nullification of erroneous options transactions. As described below, the Exchange believes that the changes the options exchanges and NYSE Arca have agreed to propose will provide transparency and finality with respect to the adjustment and nullification of erroneous Complex Order and Stock/

Option Order transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest.

The proposed rule is the culmination of this coordinated effort and reflects discussions by the options exchanges whereby the exchanges that offer Complex Orders and/or Stock/Option Orders will universally adopt new provisions that the options exchanges collectively believe will improve the handling of erroneous options transactions that result from the execution of Complex Orders and Stock-Option orders.<sup>7</sup>

The Exchange believes that the proposed rule supports an approach consistent with long-standing principles in the options industry under which the general policy is to adjust rather than nullify transactions. The Exchange acknowledges that adjustment of transactions is contrary to the operation of analogous rules applicable to the equities markets, where erroneous transactions are typically nullified rather than adjusted and where there is no distinction between the types of market participants involved in a transaction. For the reasons set forth below, the Exchange believes that the distinctions in market structure between equities and options markets continue to support these distinctions between the rules for handling obvious errors in the equities and options markets.

Various general structural differences between the options and equities markets point toward the need for a different balancing of risks for options market participants and are reflected in this proposal. Option pricing is formulaic and is tied to the price of the underlying stock, the volatility of the underlying security and other factors. Because options market participants can generally create new open interest in response to trading demand, as new open interest is created, correlated trades in the underlying or related series are generally also executed to hedge a market participant's risk. This pairing of open interest with hedging interest differentiates the options market specifically (and the derivatives markets broadly) from the cash equities markets. In turn, the Exchange believes that the hedging transactions engaged in by market participants necessitates protection of transactions through

adjustments rather than nullifications when possible and otherwise appropriate.

The options markets are also quote driven markets dependent on liquidity providers to an even greater extent than equities markets. In contrast to the approximately 7,000 different securities traded in the U.S. equities markets each day, there are more than 500,000 unique, regularly quoted option series. Given this breadth in options series the options markets are more dependent on liquidity providers than equities markets; such liquidity is provided most commonly by registered market makers but also by other professional traders. With the number of instruments in which registered market makers must quote and the risk attendant with quoting so many products simultaneously, the Exchange believes that those liquidity providers should be afforded a greater level of protection. In particular, the Exchange believes that liquidity providers should be allowed protection of their trades given the fact that they typically engage in hedging activity to protect them from significant financial risk to encourage continued liquidity provision and maintenance of the quote-driven options markets.

In addition to the factors described above, there are other fundamental differences between options and equities markets which lend themselves to different treatment of different classes of participants that are reflected in this proposal. For example, there is no trade reporting facility in the options markets. Thus, all transactions must occur on an options exchange. This leads to significantly greater retail customer participation directly on exchanges than in the equities markets, where a significant amount of retail customer participation never reaches the Exchange but is instead executed in off-exchange venues such as alternative trading systems, broker-dealer market making desks and internalizers. In turn, because of such direct retail customer participation, the exchanges have taken steps to afford those retail customers—generally Customers—more favorable treatment in some circumstances.

Proposed Rule

As more fully described below, although the proposed rule applies much of the current rule (*i.e.*, initial harmonized rule) to Complex Orders, it deviates to account for unique qualities of these transactions.<sup>8</sup> Specifically, the

<sup>4</sup> See Securities Exchange Act Release Nos. 80040 (February 14, 2017), 82 FR 11248 (February 21, 2017) ("CBOE Approval Order"); 79697 (December 27, 2016), 82 FR 167 (January 3, 2017) ("CBOE Notice") (SR-CBOE-2016-088). See also Securities Exchange Act Release No. 80247 (March 15, 2017), 82 FR 14589 (March 21, 2017) (SR-BOX-2017-08) (immediately effective filing based on CBOE Approval Order).

<sup>5</sup> See Securities Exchange Act Release No. 74921 (May 8, 2015), 80 FR 27747 (May 14, 2015) (SR-NYSEArca-2015-41).

<sup>6</sup> Rule 6.62(e) (defining Complex Order) and (h)(1) (defining Stock/Option Order).

<sup>7</sup> The Exchange notes that it only offers Stock/Option Orders in open outcry, but does not offer electronic Stock/Option Orders. Therefore, the Exchange is not adopting the CBOE provisions around Stock/Option Orders.

<sup>8</sup> For example, for a Complex Order to qualify as an Obvious or Catastrophic Error, at least one leg of the Complex Order must itself qualify as an

proposed rule reflects the fact that Complex Orders can execute against other Complex Orders or can execute against individual simple orders in the leg market.<sup>9</sup> When a Complex Order executes against the leg markets, there may be different counterparties on each leg of the Complex Order, and not every leg will necessarily be executed at an erroneous price. To account for these variables, the proposed rule, as set forth in new Commentary .05, is divided into two parts—paragraphs (a) and (b).

#### Complex Orders Executed Against Individual Legs

Proposed Commentary .05(a) governs the review of Complex Orders that are executed against the individual legs (as opposed to against another Complex Order). Proposed Rule 6.87.05(a) provides:

If a Complex Order executes against individual legs and at least one of the legs qualifies as an Obvious Error under paragraph (c)(1) or a Catastrophic Error under paragraph (d)(1), then the leg(s) that is an Obvious or Catastrophic Error will be adjusted in accordance with paragraphs (c)(4)(A) or (d)(3), respectively, regardless of whether one of the parties is a Customer. However, any Customer order subject to this paragraph (a) will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). If any leg of a Complex Order is nullified, the entire transaction is nullified.

As previously noted, at least one of the legs of the Complex Order must qualify as an Obvious or Catastrophic Error under the current rule in order for the Complex Order to receive Obvious or Catastrophic Error relief. Thus, when the Exchange is notified (within the timeframes set forth in paragraph (c)(2) or (d)(2)) of a Complex Order that is a possible Obvious Error or Catastrophic Error, the Exchange will first review the individual legs of the Complex Order to determine if one or more legs qualify as an Obvious or Catastrophic Error.<sup>10</sup> If no

Obvious or Catastrophic Error under the current rule. See proposed Commentary .05(a)–(b) to Rule 6.87. See also Rule 6.87(c)(5) (regarding Complex Order Obvious Errors, which rule text was not part of the prior harmonization effort).

<sup>9</sup> The leg market consists of individual quotes and/or orders in single options series. A Complex Order may be received by the Exchange electronically, and the legs of the Complex Order may have different counterparties. For example, Market Maker 1 may be quoting in ABC calls and Market Maker 2 may be quoting in ABC puts. A Complex Order to buy the ABC calls and puts may execute against the quotes of Market Maker 1 and Market Maker 2.

<sup>10</sup> Because a Complex Order can execute against the leg market, the Exchange may also be notified of a possible Obvious or Catastrophic Error by a

leg qualifies as an Obvious or Catastrophic Error, the transaction stands—no adjustment and no nullification.

Reviewing the legs to determine whether one or more legs qualify as an Obvious or Catastrophic Error requires the Exchange to follow the current rule. In accordance with paragraphs (c)(1) and (d)(1) of the current rule, the Exchange compares the execution price of each individual leg to the Theoretical Price<sup>11</sup> of each leg (as determined by paragraph (b) of the current rule). If the execution price of an individual leg is higher or lower than the Theoretical Price for the series by an amount equal to at least the amount shown in the Obvious Error table in paragraph (c)(1) of the current rule or the Catastrophic Error table in paragraph (d)(1) of the initial harmonized rule, the individual leg qualifies as an Obvious or Catastrophic error, and the Exchange will take steps to adjust or nullify the transaction.<sup>12</sup>

To illustrate, assume that a Customer enters a Complex Order to the Exchange consisting of leg 1 and leg 2: Leg 1 is to buy 100 ABC calls; and Leg 2 is to sell 100 ABC puts. Also, assume that Market Maker 1 (“MM1”) is quoting the ABC calls at \$1.00–1.20; and Market Maker 2 (“MM2”) is quoting the ABC puts at \$2.00–2.20. If the Complex Order executes against the quotes of MMs 1 and 2, the Customer buys the ABC calls for \$1.20 and sells the ABC puts for \$2.00. As with the Obvious/Catastrophic Error reviews for simple orders, the execution price of each Leg (*i.e.*, Legs 1 and 2) are compared to the Theoretical Price for each Leg to determine if either Leg qualifies as an Obvious Error (per paragraph (c)(1)) or Catastrophic Error (per paragraph (d)(1)).<sup>13</sup> If it is determined that one or both of the legs are an Obvious or Catastrophic Error, then the leg (or legs) that is an Obvious or Catastrophic Error will be adjusted in accordance with paragraphs (c)(4)(A) or (d)(3) of the current rule, regardless of

counterparty that received an execution in an individual options series. If upon review of a potential Obvious Error the Exchange determines an individual options series was executed against the leg of a Complex Order, proposed Commentary .05 of Rule 6.87 will govern.

<sup>11</sup> See Rule 6.87(b) (defining the manner in which Theoretical Price is determined).

<sup>12</sup> Only the execution price on the leg (or legs) that qualifies as an Obvious or Catastrophic Error per proposed Rule 6.87.05 will be adjusted. The execution price of a leg (or legs) that does not qualify as an obvious or catastrophic error will not be adjusted.

<sup>13</sup> See *supra* note 11.

whether one of the parties is a Customer.<sup>14</sup>

Although a single-legged execution that is deemed to be an Obvious Error under the current rule is nullified whenever a Customer is involved in the transaction, the Exchange believes adjusting execution prices is generally better for the marketplace than nullifying executions because liquidity providers often execute hedging transactions to offset options positions. When an options transaction is nullified the hedging position can adversely affect the liquidity provider. With regards to Complex Orders that execute against individual legs, the additional rationale for adjusting erroneous execution prices when possible is the fact that the counterparty on a leg that is not executed at an Obvious or Catastrophic Error price cannot look at the execution price to determine whether the execution may later be nullified (as opposed to the counterparty on single-legged order that is executed at an Obvious Error or Catastrophic Error price).

Paragraph (c)(4)(A) of the current rule mandates that if it is determined that an Obvious Error has occurred, the execution price of the transaction will be adjusted pursuant to the table set forth in (c)(4)(A). Although for simple orders, paragraph (c)(4)(A) is only applicable when no party to the transaction is a Customer; for purposes of Complex Orders, proposed Commentary .05(a) will supersede this limitation. Specifically, if it is determined that a leg (or legs) of a Complex Order is an Obvious Error, the leg (or legs) will be adjusted pursuant to paragraph (c)(4)(A), regardless of whether any party to the transaction is a Customer. The Size Adjustment Modifier (defined in subparagraph (a)(4)) will similarly apply (regardless of whether a Customer is on the transaction) by virtue of the application of paragraph (c)(4)(A).<sup>15</sup> The Exchange notes that adjusting all market participants is not unique or novel. When the Exchange determines that a simple order execution is a Catastrophic Error pursuant to the initial harmonized rule, paragraph (d)(3) already provides for adjusting the execution price for all market participants, including Customers.

Furthermore, as with the current, Proposed Rule 6.87.05(a) provides

<sup>14</sup> See Rule 6.87 (a)(1) (defining Customer for purposes of Rule 6.87 as not including any broker-dealer or Professional Customer).

<sup>15</sup> See Rule 6.87(c)(4)(A) (providing that any non-Customer Obvious Error exceeding 50 contracts will be subject to the Size Adjustment Modifier defined in sub-paragraph (a)(4)).

protection for Customer orders, stating that where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). For example, assume a Customer enters a Complex Order to buy leg 1 and leg 2:

- Assume the NBBO for leg 1 is \$0.20–1.00 and the NBBO for leg 2 is \$0.501.00 and that these have been the NBBOs since the market opened.
- A split-second prior to the execution of the Complex Order, a different Customer enters a simple order to sell the leg 1 options series at \$1.30, and this order enters the Exchange's book resulting in a BBO of \$0.20–\$1.30. The limit price of the simple order is \$1.30.

- The Complex Order executes leg 1 against the Exchange best offer of \$1.30 and leg 2 executes at \$1.00, for a net execution price of \$2.30.

- However, leg 1 executed on a wide quote (the NBBO for leg 1 was \$0.20–1.00 at the time of execution, which is wider than \$0.75).<sup>16</sup> Leg 2 was not executed on a wide quote (the market for leg 2 was \$0.50–1.00); thus, leg 2 execution price stands.

- The Exchange determines that the Theoretical Price for leg 1 is \$1.00, which was the best offer prior to the execution. Leg 1 qualifies as an Obvious Error because the difference between the Theoretical Price (\$1.00) and the execution price (\$1.30) is larger than \$0.25.<sup>17</sup>

- Per Proposed Rule 6.87.05(a), Customers will also be adjusted in accordance with Rule 6.87(c)(4)(A), which for a buy transaction under \$3.00 means the Theoretical Price will be adjusted by adding \$0.15 to the Theoretical Price of \$1.00.<sup>18</sup> Thus, the adjusted execution price for Leg 1 would be \$1.15.

- However, adjusting the execution price of leg 1 to \$1.15 would violate the limit price of the Customer's sell order for leg 1, which was \$1.30.

- Thus, the entire Complex Order transaction will be nullified because the limit price of a Customer's sell order would be violated by the adjustment.<sup>19</sup>

As the above example demonstrates, incoming Complex Orders may execute against resting simple orders in the leg market. If a Complex Order leg is deemed to be an Obvious Error, adjusting the execution price of the leg may violate the limit price of the resting order, which will result in nullification if the resting order is for a Customer. In contrast, Commentary .02 to Rule 6.87 provides that if an adjustment would result in an execution price that is higher than an erroneous buy transaction or lower than an erroneous sell transaction the execution will not be adjusted or nullified.<sup>20</sup> If the adjustment of a Complex Order would violate the Complex Order Customer's limit price, the transaction will be nullified.

As previously noted, paragraph (d)(3) of the current rule already mandates that if it is determined that a Catastrophic Error has occurred, the execution price of the transaction will be adjusted pursuant to the table set forth in (d)(3). For purposes of Complex Orders, under Rule 6.87.05(a), if one of the legs of a Complex Order is determined to be a Catastrophic Error under paragraph (d)(3), all market participants will be adjusted in accordance with the table set forth in (d)(3). Again, however, where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). Again, if any leg of a Complex Order is nullified, the entire transaction is nullified.

Other than honoring the limit prices established for Customer orders, the Exchange has proposed to treat Customers and non-Customers the same in the context of the Complex Orders that trade against the leg market. When Complex Orders trade against the leg market, it is possible that at least some of the legs will execute at prices that would not be deemed Obvious or Catastrophic Errors, which gives the counterparty in such situations no indication that the execution will later be adjusted or nullified. The Exchange believes that treating Customers and non-Customers the same in this context will provide additional certainty to non-Customers (especially Market Makers) with respect to their potential exposure and hedging activities, including comfort that even if a transaction is later adjusted, such transaction will not be fully nullified. However, as noted

above, under the proposed rule where at least one party to the transaction is a Customer, the trade will be nullified if the adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). The Exchange has retained the protection of a Customer's limit price in order to avoid a situation where the adjustment could be to a price that a Customer would not have expected, and market professionals such as non-Customers would be better prepared to recover in such situations. Therefore, adjustment for non-Customers is more appropriate.

#### Complex Orders Executed Against Complex Orders

Proposed Commentary .05(b) to Rule 6.87 governs the review of Complex Orders that are executed against other Complex Orders. Specifically, proposed Rule 6.87.05(b) provides:

If a Complex Order executes against another Complex Order and at least one of the legs qualifies as an Obvious Error under paragraph (c)(1) or a Catastrophic Error under paragraph (d)(1), then the leg(s) that is an Obvious or Catastrophic Error will be adjusted or busted in accordance with paragraph (c)(4) or (d)(3), respectively, so long as either: (i) The width of the Complex NBBO for the Complex Order strategy just prior to the erroneous transaction was equal to or greater than the amount set forth in the wide quote table of paragraph (b)(3); or (ii) the net execution price of the Complex Order is higher (lower) than the offer (bid) of the Complex NBBO for the Complex Order strategy just prior to the erroneous transaction by an amount equal to at least the amount shown in the table in paragraph (c)(1). If any leg of a Complex Order is nullified, the entire transaction is nullified.

As described above in relation to proposed Rule 6.87.05(a), the first step is for the Exchange to review (upon receipt of a timely notification in accordance with paragraph (c)(2) or (d)(2) of the current rule) the individual legs to determine whether a leg or legs qualifies as an Obvious or Catastrophic Error. If no leg qualifies as an Obvious or Catastrophic Error, the transaction stands—no adjustment and no nullification. If the adjustment of a complex order would violate the complex order Customer's limit price, the transaction will be nullified.

Unlike proposed Rule 6.87.05(a), the Exchange also proposes to compare the net execution price of the entire Complex Order package to the Complex NBBO for the complex order strategy.<sup>21</sup>

<sup>21</sup> The Complex NBBO is the derived net market for a Complex Order package. For example, if the

<sup>16</sup> See Rule 6.87(b)(3).

<sup>17</sup> See Rule 6.87(c)(1).

<sup>18</sup> See Rule 6.87(c)(4)(A).

<sup>19</sup> If any leg of a Complex Order is nullified, the entire transaction is nullified. See Proposed Rule 6.87.05(a). The Exchange notes that the simple order in this example is not an erroneous sell transaction because the execution price was not erroneously low. See Rule 6.87(a)(2).

<sup>20</sup> See Commentary .02 to Rule 6.87.

Complex Orders are exempt from the order protection rules of the options exchanges.<sup>22</sup> Thus, depending on the manner in which the systems of an options exchange are calibrated, a Complex Order can execute without regard to the prices offered in the complex order books or the leg markets of other options exchanges. In certain situations, reviewing the execution prices of the legs in a vacuum would make the leg appear to be an Obvious or Catastrophic error, even though the net execution price on the Complex Order is not an erroneous price. For example, assume the Exchange receives a Complex Order to buy ABC calls and sell ABC puts.

- If the BBO for the ABC calls is \$5.50–7.50 and the BBO for ABC puts is \$3.00–4.50, then the Exchange's spread market is \$1.00–4.50.<sup>23</sup>

- If the NBBO for the ABC calls is \$6.00–6.50 and the NBBO for the ABC puts is \$3.50–4.00, then the Complex NBBO is \$2.00–3.00. If the Customer buys the calls at \$7.50 and sells the puts at \$4.50, the Complex Order Customer receives a net execution price of \$3.00 (debit), which is the expected net execution price as indicated by the Complex NBBO offer of \$3.00.

If the Exchange were to solely focus on the \$7.50 execution price of the ABC calls or the \$4.50 execution price of the ABC puts, the execution would qualify as an Obvious or Catastrophic error because the execution price on the legs was outside the NBBO, even though the net execution price is accurate. Thus, the additional review of the Complex

NBBO to determine if the Complex Order was executed at a truly erroneous price is necessary.<sup>24</sup> The same concern is not present when a Complex Order executes against the leg market under proposed Rule 6.87.05(a). The Exchange permits a given leg of a Complex Order to trade through the NBBO, however the Exchange will not accept incoming Complex Orders if they are priced a certain amount outside of the Complex NBBO.<sup>25</sup>

In order to incorporate Complex NBBO, proposed Rule 6.87.05(b) provides that if the Exchange determines that a leg or legs does qualify as an Obvious or Catastrophic Error, the leg or legs will be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the current rule, so long as either: (i) The width of the Complex NBBO for the Complex Order strategy just prior to the erroneous transaction was equal to or greater than the amount set forth in the wide quote table of paragraph (b)(3) of the current rule or (ii) the net execution price of the Complex Order is higher (lower) than the offer (bid) of the Complex NBBO for the Complex Order strategy just prior to the erroneous transaction by an amount equal to at least the amount shown in the table in paragraph (c)(1) of the current rule.

For example, assume an individual leg or legs qualifies as an Obvious or Catastrophic Error and the width of the Complex NBBO of the Complex Order strategy just prior to the erroneous transaction is \$6.00–9.00. The Complex Order will qualify to be adjusted or

busted in accordance with paragraph (c)(4) of the current rule because the wide quote table of paragraph (b)(3) of the current rule indicates that the minimum amount is \$1.50 for a bid price between \$5.00 to \$10.00. If the Complex NBBO were instead \$6.00–7.00 the Complex Order strategy would not qualify to be adjusted or busted pursuant to proposed Rule 6.87.05(b)(i) because the width of the Complex NBBO is \$1.00, which is less than the required \$1.50. However, the execution may still qualify to be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the current rule pursuant to proposed Rule 6.87.05(b)(ii). Focusing on the Complex NBBO in this manner will ensure that the Obvious/ Catastrophic Error review process focuses on the net execution price instead of the execution prices of the individual legs, which may have execution prices outside of the NBBO of the leg markets.

Again, assume an individual leg (or legs) qualifies as an Obvious or Catastrophic Error as described above. If the Complex NBBO is \$6.00–7.00 (not a wide quote pursuant to the wide quote table in paragraph (b)(3) of the current rule) but the execution price of the entire Complex Order package (*i.e.*, the net execution price) is higher (lower) than the offer (bid) of the Complex NBBO for the complex order strategy just prior to the erroneous transaction by an amount equal to at least the amount in the table in paragraph (c)(1) of the current rule, then the Complex Order qualifies to be adjusted or busted in accordance with paragraph (c)(4) or (d)(3) of the current rule. For example, if the Complex NBBO for the Complex Order strategy just prior to the erroneous transaction is \$6.00–7.00 and the net execution price of the Complex Order transaction is \$7.75, the Complex Order qualifies to be adjusted or busted in accordance with paragraph (c)(4) of the current rule because the execution price of \$7.75 is more than \$0.50 (*i.e.*, the minimum amount according to the table in paragraph (c)(1) when the price is above \$5.00 but less than \$10.01) from the Complex NBBO offer of \$7.00. Focusing on the Complex NBBO in this manner will ensure that the Obvious/ Catastrophic error review process focuses on the net execution price instead of the execution prices of the individual legs, which may have execution prices outside of the NBBO of the leg markets.

NBBO of Leg 1 is \$1.00–2.00 and the NBBO of Leg 2 is \$5.00–7.00, then the Complex NBBO for a Complex Order to buy Leg 1 and buy Leg 2 is \$6.00–9.00. See Rule 6.1A(11)(b) (defining Complex NBBO as “the NBBO for a given complex order strategy as derived from the national best bid and national best offer for each individual component series of a Complex Order”). The Complex NBBO is analogous to the concept of the National Spread Market, or NSM, as used by other exchanges. See *supra* 4, CBOE Notice, 82 FR at 170; CBOE Approval Order, 82 FR at 11249–50.

<sup>22</sup> All options exchanges have the same order protection rule. See, *e.g.*, Rule 6.94(b)(7).

<sup>23</sup> The Complex Order is to buy ABC calls and sell ABC puts. The Exchange's best offer for ABC puts is \$7.50 and Exchange's best bid for is \$3.00. If the Customer were to buy the Complex Order strategy, the Customer would receive a debit of \$4.50 (buy ABC calls for \$7.50 minus selling ABC puts for \$3.00). If the Customer were to sell the Complex Order strategy the Customer would receive a credit of \$1.00 (selling the ABC calls for \$5.50 minus buying the ABC puts for \$4.50). Thus, the Exchange's spread market—or Complex BBO—is \$1.00–4.50. See also Rule 6.1A(11)(b) (defining Complex BBO as “the BBO for a given complex order strategy as derived from the best bid on OX and best offer on OX for each individual component series of a Complex Order”). The Complex BBO is analogous to the concept of the “exchange spread market,” as used by other exchanges. See *supra* 4, CBOE Notice, 82 FR at 173, fn22.

<sup>24</sup> The Exchange notes that this treatment is consistent with current Rule 6.87(c)(5)(A), which provides that “[i]f a Complex Order executes against another Complex Order in the Complex Order Book and one or more legs of the transaction is deemed eligible to be adjusted or busted, the entire trade (all legs) will be busted, unless both parties agree to adjust the transaction to a different price within thirty (30) minutes of being notified by the Exchange of the decision to bust”. The Exchange proposes to delete paragraph (c)(5) of the Rule in its entirety to harmonize with proposed Rule 6.87.05. See below, under the heading “Conforming Change to Eliminate Current Rule Regarding Complex Orders Obvious Errors,” for additional discussion.

<sup>25</sup> Commentary .05 to Rule 6.91 sets forth the Price Protection Filter (“Filter”), which prevents the execution of aggressively-priced electronic Complex Orders (*i.e.*, priced so far away from the prevailing contra-side NBBO market for the same strategy). Specifically, an incoming electronic Complex Order will be rejected (or cancelled) if the sum of the following is less than zero (\$0.00): (i) The net debit (credit) limit price of the order, (ii) the contra-side Complex NBBO for that same Complex Order, and (iii) an amount specified by the Exchange (“Specified Amount” or “Amount”). The Specified Amount varies depending on the smallest MPV of any leg in the Complex Order, *e.g.*, the Amount ranges from .10 to .15 to .30 where the smallest MPV of any leg is .01 to .05 to .10, respectively. See Commentary .05 to Rule 6.91.

Although the Exchange believes adjusting execution prices is generally better for the marketplace than nullifying executions because liquidity providers often execute hedging transactions to offset options positions, the Exchange recognizes that Complex Orders executing against other Complex Orders is similar to simple orders executing against other simple orders because both parties are able to review the execution price to determine whether the transaction may have been executed at an erroneous price. Thus, for purposes of Complex Orders that meet the requirements of Rule 6.87.05(b), the Exchange proposes to apply the current rule and adjust or bust obvious errors in accordance with paragraph (c)(4) (as opposed to applying paragraph (c)(4)(A) as is the case under Rule 6.87.05(a) and catastrophic errors in accordance with (d)(3).

Therefore, for purposes of Complex Orders under proposed Rule 6.87.05(b), if one of the legs is determined to be an obvious error under paragraph (c)(1), all Customer transactions will be nullified, unless an OTP Holder or OTP Firm submits 200 or more Customer transactions for review in accordance with (c)(4)(C).<sup>26</sup> For purposes of Complex Orders under proposed Rule 6.87.05(b), if one of the legs is determined to be a Catastrophic Error under paragraph (d)(3) and all of the other requirements of proposed Rule 6.87.05(b) are met, all market participants will be adjusted in accordance with the table set forth in (d)(3). Again, however, pursuant to paragraph (d)(3) where at least one party to a Complex Order transaction is a Customer, the transaction will be nullified if adjustment would result in an execution price higher (for buy transactions) or lower (for sell transactions) than the Customer's limit price on the Complex Order or individual leg(s). Also, if any leg of a Complex Order is nullified, the entire transaction is nullified.

#### Conforming Change To Eliminate Rule Regarding Complex Orders Obvious Errors

Finally, the Exchange proposes to delete the rule text in paragraph (c)(5) of the current rule, which addresses "Complex Order Obvious Errors," in light of the proposed addition of Commentary .05 to the Rule. The Exchange proposed to designate Rule 6.87(c)(5) as "Reserved." The Exchange

believes this modification would add clarity, transparency and internal consistency to the Rule.

#### Implementation

In order to ensure that the other options exchanges are able to adopt rules consistent with this proposal and to coordinate effectiveness of such harmonized rules, the Exchange proposed to delay the operative date of this proposal to April 17, 2017.

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>28</sup> 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.

As described above, the Exchange and other options exchanges are seeking to adopt harmonized rules related to the adjustment and nullification of erroneous options transactions. The Exchange believes that the proposed rule will provide greater transparency and clarity with respect to the adjustment and nullification of erroneous options transactions. Particularly, the proposed changes seek to achieve consistent results for participants across U.S. options exchanges while maintaining a fair and orderly market, protecting investors and protecting the public interest. Based on the foregoing, the Exchange believes that the proposal is consistent with Section 6(b)(5) of the Act<sup>29</sup> in that the proposed rule will foster cooperation and coordination with persons engaged in regulating and facilitating transactions.

The Exchange believes the various provisions allowing or dictating adjustment rather than nullification of a trade are necessary given the benefits of adjusting a trade price rather than nullifying the trade completely. Because options trades are used to hedge, or are hedged by, transactions in other markets, including securities and futures, many Participants, and their customers, would rather adjust prices of executions rather than nullify the transactions and, thus, lose a hedge altogether. As such, the Exchange

believes it is in the best interest of investors to allow for price adjustments as well as nullifications.

The Exchange does not believe that the proposal is unfairly discriminatory, even though it differentiates in many places between Customers and non-Customers. As with the current rule, Customers are treated differently, often affording them preferential treatment. This treatment is appropriate in light of the fact that Customers are not necessarily immersed in the day-to-day trading of the markets, are less likely to be watching trading activity in a particular option throughout the day, and may have limited funds in their trading accounts. At the same time, the Exchange reiterates that in the U.S. options markets generally there is significant retail customer participation that occurs directly on (and only on) options exchanges such as the Exchange. Accordingly, differentiating among market participants with respect to the adjustment and nullification of erroneous options transactions is not unfairly discriminatory because it is reasonable and fair to provide Customers with additional protections as compared to non-Customers.

The Exchange believes that its proposal to adopt the ability to adjust a Customer's execution price when a Complex Order is deemed to be an Obvious or Catastrophic Error is consistent with the Act. A Complex Order that executes against individual leg markets may receive an execution price on an individual leg that is not an Obvious or Catastrophic error but another leg of the transaction is an Obvious or Catastrophic Error. In such situations where the Complex Order is executing against at least one individual or firm that is not aware of the fact that they have executed against a Complex Order or that the Complex Order has been executed at an erroneous price, the Exchange believes it is more appropriate to adjust execution prices if possible because the derivative transactions are often hedged with other securities. Allowing adjustments instead of nullifying transactions in these limited situations will help to ensure that market participants are not left with a hedge that has no position to hedge against.

Finally, the proposal to delete paragraph (c)(5) of the current rule, which addresses "Complex Order Obvious Errors," would add clarity, transparency and internal consistency to the Rule, in light of the proposed addition of Commentary .05 to the Rule.

<sup>26</sup> Rule 6.87(c)(4)(C) also requires the orders resulting in 200 or more Customer transactions to have been submitted during the course of 2 minutes or less.

<sup>27</sup> 15 U.S.C. 78f(b).

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

### 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 purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the proposed rule change is substantially similar to a filing submitted by CBOE that was recently approved by the Commission.<sup>30</sup>

The Exchange believes the proposal will not impose a burden on intermarket competition but will rather alleviate any burden on competition because it is the result of a collaborative effort by all options exchanges to harmonize and improve the process related to the adjustment and nullification of erroneous options transactions. The Exchange does not believe that the rules applicable to such process is an area where options exchanges should compete, but rather, that all options exchanges should have consistent rules to the extent possible. Particularly where a market participant trades on several different exchanges and an erroneous trade may occur on multiple markets nearly simultaneously, the Exchange believes that a participant should have a consistent experience with respect to the nullification or adjustment of transactions. The Exchange understands that all other options exchanges that trade Complex Orders and/or Stock/Option Orders intend to file proposals that are substantially similar to this proposal.

The Exchange does not believe that the proposed rule change imposes a burden on intramarket competition because the provisions apply to all market participants equally within each participant category (*i.e.*, Customers and non-Customers). With respect to competition between Customer and non-Customer market participants, the Exchange believes that the proposed rule acknowledges competing concerns and tries to strike the appropriate balance between such concerns. For instance, the Exchange believes that protection of Customers is important due to their direct participation in the options markets as well as the fact that they are not, by definition, market professionals. At the same time, the Exchange believes due to the quote-driven nature of the options markets,

the importance of liquidity provision in such markets and the risk that liquidity providers bear when quoting a large breadth of products that are derivative of underlying securities, that the protection of liquidity providers and the practice of adjusting transactions rather than nullifying them is of critical importance. As described above, the Exchange will apply specific and objective criteria to determine whether an erroneous transaction has occurred and, if so, how to adjust or nullify a transaction.

### 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 foregoing 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)(iii) of the Act<sup>31</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>32</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>33</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>34</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest as it will allow the Exchange to implement the proposed rule change by April 17, 2017 in coordination with the other options exchanges. Accordingly, the Commission hereby waives the

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>32</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Commission has waived the five-day pre-filing requirement in this case.

<sup>33</sup> 17 CFR 240.19b-4(f)(6).

<sup>34</sup> 17 CFR 240.19b-4(f)(6)(iii).

operative delay and designates the proposal operative upon filing.<sup>35</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### IV. Solicitation of Comments

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

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2017-42 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEArca-2017-42. 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

<sup>35</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>30</sup> See CBOE Approval Order, *supra* note 4.



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 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-2017-42, and should be submitted on or before May 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

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

[FR Doc. 2017-08390 Filed 4-25-17; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32607; 812-14695]

### Formula Folio Investments, LLC and Northern Lights Fund Trust IV

April 20, 2017.

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

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (“Funds”) to issue shares redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit

investment trusts outside of the same group of investment companies as the Funds (“Funds of Funds”) to acquire shares of the Funds; and (f) certain Funds (“Feeder Funds”) to create and redeem Creation Units in-kind in a master-feeder structure.

**Applicants:** Formula Folio Investments, LLC (the “Initial Adviser”), a Michigan limited liability company registered as an investment adviser under the Investment Advisers Act of 1940, and Northern Lights Fund Trust IV (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series.

**Filing Dates:** The application was filed on August 30, 2016, and amended on November 4, 2016.

**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 May 15, 2017, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: the Initial Adviser, 89 Ionia Avenue NW., Suite 600, Grand Rapids, MI 49503; the Trust, 17605 Wright Street, Omaha, NE 68130.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551-6879, or David J. Marcinkus, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission’s Web site by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Summary of the Application

1. Applicants request an order that would allow Funds to operate as

actively-managed exchange traded funds (“ETFs”).<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an “Authorized Participant”, which will have signed a participant agreement with a broker-dealer registered under the Securities Exchange Act of 1934 (“Exchange Act”) (together with any future distributor, the “Distributor”). Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (“Portfolio Positions”). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Positions that will form the basis for the Fund’s calculation of NAV at the end of the day.

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

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

<sup>1</sup> Applicants request that the order apply to future series of the Trust or of other open-end management investment companies that currently exist or that may be created in the future (each, included in the term “Fund”), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity or any successor thereto is included in the term “Adviser”) and (b) comply with the terms and conditions of the application.

<sup>36</sup> 17 CFR 200.30-3(a)(12).