

### V. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5), or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>37</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 12, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 26, 2017. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including, where relevant, any specific data, statistics, or studies, on the following:

1. Would a direct listing based only on an Exchange Act registration without prior trading and Securities Act registration present unique considerations, including with respect to the role of various distribution participants, the extent and nature of pricing information available to market participants prior to the commencement of trading, and the availability of information indicative of the number of shares that are likely to be made available for sale at the commencement of trading? Would these considerations raise any concerns, including with respect to promoting just and equitable

principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest? If so, please identify those risks and explain their significance.

2. To what extent would a direct listing impact the ability of the DMM to facilitate the opening (or otherwise fulfill its obligations as a DMM) on the first day of trading of a security listed only with an Exchange Act registration? To the extent there would be an impact, please identify it and explain its significance. To what extent would any such impact be mitigated by the proposed requirement that the DMM consult with a financial adviser to the issuer in order to effect a fair and orderly opening of the security? 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-NYSE-2017-30 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 Numbers SR-NYSE-2017-30. 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 these filings 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-NYSE-2017-30 and should be submitted on or before October 12, 2017. Rebuttal comments should be submitted by October 26, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

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

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**BILLING CODE 8011-01-P**

### SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32820; 812-14696]

#### Active Weighting Funds ETF Trust and Active Weighting Advisors LLC

September 18, 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; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Acquiring Funds") to acquire shares of the Funds.

<sup>38</sup> 17 CFR 200.30-3(a)(57).

<sup>37</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

**APPLICANTS:** Active Weighting Funds ETF Trust (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Active Weighting Advisors LLC (the “Initial Adviser”), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940.

**FILING DATE:** The application was filed on August 31, 2016, and amended on January 13, 2017, May 25, 2017, and September 15, 2017.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 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, 200 Vesey Street, 24th Floor, New York, NY 10281.

**FOR FURTHER INFORMATION CONTACT:** Christine Y. Greenlees, Senior Counsel, at (202) 551–6879, or Robert H. Shapiro, 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

<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

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. 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.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c–1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a current offering price described in a Fund’s prospectus, and not at a price

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. For purposes of the requested order, the term “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Positions and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

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

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are affiliated persons, or second tier affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments and Redemption Instruments will be valued in the same manner as those

Portfolio Positions currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from an Acquiring Fund, and to engage in the accompanying in-kind transactions with the Acquiring Fund.<sup>2</sup> The purchase of Creation Units by an Acquiring Fund directly from a Fund will be accomplished in accordance with the policies of the Acquiring Fund and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or a second-tier affiliate, of an Acquiring Fund because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Acquiring Fund.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-81638; File No. SR-FICC-2017-002]

### Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Implement the Capped Contingency Liquidity Facility in the Government Securities Division Rulebook

September 15, 2017.

On March 1, 2017, Fixed Income Clearing Corporation (“FICC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-FICC-2017-002 (“Proposed Rule Change”) 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> to implement a Capped Contingency Liquidity Facility in FICC’s Government Securities Division Rulebook.<sup>3</sup> The Proposed Rule Change was published for comment in the **Federal Register** on March 20, 2017.<sup>4</sup> The Commission received five comment letters<sup>5</sup> to the Proposed Rule

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

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

<sup>3</sup> FICC also filed the Proposed Rule Change as advance notice SR-FICC-2017-802 (“Advance Notice”) pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b-4(n)(1)(i) under the Act, 17 CFR 240.19b-4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on March 15, 2017. Securities Exchange Act Release No. 80191 (March 9, 2017), 82 FR 13876 (March 15, 2017) (SR-FICC-2017-802). The Commission extended the deadline for its review period of the Advance Notice from April 30, 2017 to June 29, 2017. Securities Exchange Act Release No. 80520 (April 25, 2017), 82 FR 20404 (May 1, 2017) (SR-FICC-2017-802). The Commission issued a notice of no objection to the Advance Notice on June 29, 2017. Securities Exchange Act Release No. 81054 (June 29, 2017), 82 FR 31356 (July 6, 2017). The proposal in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

<sup>4</sup> Securities Exchange Act Release No. 80234 (March 14, 2017), 82 FR 14401 (March 20, 2017) (SR-FICC-2017-002).

<sup>5</sup> See letter from Robert E. Pooler Jr., Chief Financial Officer, Ronin Capital LLC (“Ronin”), dated April 10, 2017, to Robert W. Errett, Deputy Secretary, Commission; letter from Alan B. Levy, Managing Director, Industrial and Commercial Bank of China Financial Services LLC (“ICBC”), Philip Vandermause, Director, Aardvark Securities LLC (“Aardvark”), David Rutter, Chief Executive Officer, LiquidityEdge LLC, Robert Pooler, Chief Financial Officer, Ronin, Jason Manumaleuna, Chief Financial Officer and EVP, Rosenthal Collins Group LLC, and Scott Skyrn, Managing Director, Wedbush Securities Inc. (“Wedbush”); letter from Timothy J. Cuddihy, Managing Director, FICC, dated April 25, 2017, to Robert W. Errett, Deputy Secretary, Commission; letter from Robert E. Pooler Jr., Chief

Change, including a response letter from FICC. On May 30, 2017, the Commission instituted proceedings under Section 19(b)(2)(B)(i) of the Act<sup>6</sup> to determine whether to approve or disapprove the Proposed Rule Change.<sup>7</sup>

Section 19(b)(2)(B)(ii) of the Act provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change.<sup>8</sup> The Commission may, however, extend the period for issuing an order approving or disapproving the proposed rule change by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.<sup>9</sup>

The 180th day after publication of the notice for the Proposed Rule Change in the **Federal Register** is September 16, 2017. The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the Proposed Rule Change so that it has sufficient time to consider the Proposed Rule Change and the comments received. Accordingly, the Commission, pursuant to Section 19(b)(2)(B)(ii) of the Act,<sup>10</sup> designates November 15, 2017 as the date by which the Commission shall either approve or disapprove the Proposed Rule Change.

The Commission also seeks additional comment to help further inform its analysis of the Proposed Rule Change. Specifically, the Commission invites interested persons to provide views, data, and arguments concerning the Proposed Rule Change, including whether the Proposed Rule Change is consistent with the Act and the applicable rules or regulations thereunder. Please note that comments previously received on the substance of the Proposed Rule Change will be considered together with comments submitted in response to this notice. Therefore, while commenters are free to

Financial Officer, Ronin, dated June 19, 2017, to Robert W. Errett, Deputy Secretary, Commission; and letter from Alan B. Levy, Managing Director, ICBC, Philip Vandermause, Director, Aardvark, Robert Pooler, Chief Financial Officer, Ronin, and Scott Skyrn, Managing Director, Wedbush, dated June 27, 2017, to Robert W. Errett, Deputy Secretary, Commission, available at <https://www.sec.gov/comments/sr-ficc-2017-002/ficc2017002.htm>.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B)(i).

<sup>7</sup> See Securities Exchange Act Release No. 80812 (May 30, 2017), 82 FR 25642 (June 2, 2017) (SR-FICC-2017-002).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B)(ii).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*