For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[90]

Kevin M. O'Neill,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68667; File No. SR–NYSEArca-2012–109]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Shares of the U.S. Equity High Volatility Put Write Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

January 16, 2013.

I. Introduction

On September 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the U.S. Equity High Volatility Put Write Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). The proposed rule change was published in the **Federal Register** on October 18, 2012.[3] The Commission received no comments on the proposal. On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares will be issued by the ALPS ETF Trust (''Trust'').[6] ALPS Advisors, Inc. will be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC will be the Fund's investment sub-adviser (''Sub-Adviser''). The Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the 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 and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Bank of New York Mellon (''BNY'') will serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. will be the Fund's distributor (''Distributor''). NYSE Arca will be the ''Index Provider'' for the Fund. NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and will implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

Description of the Fund

The Fund will seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity High Volatility Put Write Index (''Index''). The Index measures the return of a hypothetical portfolio consisting of U.S. exchange traded put options which have been sold on each of 20 stocks and a cash position calculated as described below. The 20 stocks on which options are sold (''written'') are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

The Exchange submitted this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.'' [7] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) [8] sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. As described further below, the Index consists of U.S. exchange-traded put options. The Exchange has represented that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index consists of at least 20 exchange-listed put options (''Index Components''), selected in accordance with NYSE Arca's rules-based methodology for the Index. In selecting the stocks underlying the Index Components, the Index Provider begins with the universe of all U.S. exchange-listed stocks, and then screens for those stocks that meet the following criteria: (1) Minimum market capitalization of at least $5 billion; (2) minimum trading volume of at least 50 million shares during the preceding 6 months; (3) minimum average daily trading volume of one million shares during the preceding 6 months; (4) minimum average daily trading value of at least $10 million during the preceding 6 months; (5) share price of $10 or higher; (6) the availability of U.S. exchange-listed options. The Index is

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68044 (October 12, 2012), 77 FR 64160 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 68319 (November 29, 2012), 77 FR 72429 (December 5, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On May 3, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28262 (May 1, 2008) (File No. 812–13430).

[7] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[8] Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of US Component Stocks, upon the initial listing of a series of Investment Company Units pursuant to Rule 19b–4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act. *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

reconstituted/rebalanced every two months (*i.e.,* six times a year).

Stocks meeting the above criteria are then sorted in descending order based upon the two month implied volatility as measured on Bloomberg using the field labeled 2M_PUT_IMP_VOL_50DELTA_DFLT, which is derived from at-the-money listed put options on each of such stocks.[9] The 20 stocks with the highest volatility are selected for inclusion. The industry sector of each stock is also noted, and the Index will not allow more than 10 of the 20 stocks to be from any one industry sector.

Each listed put option included in the Index will be an ''American-style'' option (*i.e.,* an option which can be exercised at the strike price at any time prior to its expiration) and have a 60-day term. The strike price (*i.e.,* the price at which a put option can be exercised) of each put option included in the Index must be as close as possible to 85% of the closing price of the option's underlying stock price as of the beginning of each 60-day period.[10] The listed put options included in the Index can be exercised at any time prior to their expiration, but the Index will reflect the value of each such option throughout the 60-day period as if the option is not exercised until its expiration. Each such option will automatically be deemed exercised on its expiration date if its underlying stock price is below its strike price. If the stock underlying the put option closes below the option's strike price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock is deemed to be made, and the Index value is correspondingly reduced. If the underlying stock does not close below its strike price, then the option expires worthless and the entire amount of the premium payment is retained within the Index.[11]

The Exchange has provided the following example. Suppose a stock ''ABC'' trades at $50 per share at the start of the 60-day period, and a listed put option with a term of 60 days was sold with a strike price of $42.50 per share for a premium of $2 per share:

• *Settlement at or above the strike price:* If at the end of 60 days the ABC stock closed at or above the strike price of $42.50, then the option would expire worthless, and the Index's value would reflect the retention of the $2 per share premium. The Index's value thus would be increased by $2 per share on the ABC option position.

• *Settlement below the strike price:* If at the end of 60 days ABC closed at $35, then the option would automatically be deemed exercised on its expiration date. The Index's value would change as if the Index had put (*i.e.,* would buy) ABC at the strike price of $42.50 and would sell ABC immediately at the closing price of $35. As a result, the Index's value would be reduced by $7.50 per share. However, the Index's value would also reflect the retention of the $2 per share premium, so the net loss to the Index's value would be $5.50 per share on the ABC option position.

The Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The options positions are equally weighted in the Index and the Fund's portfolio, meaning that 1/20th of the net asset value (''NAV'') of Shares of the Fund will be invested in each option position at the beginning of the applicable 60-day period. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month Treasury-bill (''T-Bill'') rate. The cash position is decreased by cash settlement on options which finish in-the-money (*i.e.,* where the closing price of the underlying stock at the end of the 60-day period is below the strike price). The cash position is also decreased by a deemed cash distribution paid following each 60-day period, currently targeted at the rate of 1.5% of the value of the Index. However, if the option premiums generated during the period are less than 1.5%, the deemed distribution will be reduced by the amount of the shortfall.

Primary Investments

The Fund under normal circumstances[12] will invest at least 80% of its total assets in component securities that comprise the Index (*i.e.,* the Fund's option positions) and in T-Bills. The Fund will seek to track the performance of the Index by selling listed 60-day put options in proportion to their weightings in the Index. By selling an option, the Fund will receive premiums from the buyer of the option, which will increase the Fund's return if the option is not exercised and thus expires worthless. However, if the option's underlying stock declines below the strike price, the option will finish in-the-money, and the Fund will be required to buy the underlying stock at the strike price, effectively paying the buyer the difference between the strike price and the closing price. Therefore, by writing a put option, the Fund will be exposed to the amount by which the price of the underlying stock is less than the strike price. As the seller of a listed put option, the Fund will incur an obligation to buy the underlying instrument from the purchaser of the option at the option's strike price, upon exercise by the option purchaser. If a listed put option sold by the Fund is exercised prior to the end of a 60-day period, the Fund will buy the underlying stock at the time of exercise and at the strike price, and will hold the stock until the end of the 60-day period.

Each put option sold by the Fund will be covered through investments in three month T-Bills at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price).

Every 60 days, the options included within the Index are exercised or expire and new option positions are established, and the Fund will enter into new option positions accordingly and sell any underlying stocks it owns as a result of the Fund's prior option positions having been exercised. This 60-day cycle likely will cause the Fund to have frequent and substantial portfolio turnover.[13]

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[14]

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[9] The Adviser represents that Bloomberg defines implied volatility as Delta Ivol, which is volatility as expressed in delta. Delta values range from 0 to 100, with 50 delta as the theoretical at-the-money strike. A delta of less than 50 is considered out-of-the-money, while a delta of greater than 50 is considered in-the-money.

[10] The Adviser represents that a specific percentage cannot be indicated because options are listed by an exchange in pre-defined increments (*i.e.,* 1, 1.5, or 2 increments) around the market price of the stock, rounded to the nearest dollar.

[11] The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

[12] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or options markets or the financial markets generally; 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.

[13] If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 60-day period, the Fund will sell additional listed put options which will be exercised or expire at the end of such 60-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 60-day period, the Fund will terminate the appropriate portion of the options it has sold accordingly.

[14] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time

including repurchase agreements [15] or other funds which invest exclusively in money market instruments, convertible securities, and structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index). Furthermore, the Fund may invest in one or more financial instruments, including but not limited to futures contracts, swap agreements,[16] forward contracts, and options on securities (other than options in which the Fund principally will invest), indices, and futures contracts.[17] Swaps, options (other than options in which the Fund principally will invest), and futures contracts [18] may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[19]

The Fund may invest up to 20% of its net assets in investments not included in its Index, but which the Adviser believes will help the Fund track the Index. For example, there may be instances in which the Adviser may choose to purchase (or sell) securities not in the Index which the Adviser believes are appropriate to substitute for one or more Index Components in seeking to replicate, before fees and expenses, the performance of the Index.

The Fund may borrow money from a bank up to a limit of 10% of the value of its assets, but only for temporary or emergency purposes. The Fund may not invest 25% of its total assets in the securities of issuers conducting their principal business activities in the same industry or group of industries (excluding the U.S. government or any of its agencies or instrumentalities). Nonetheless, to the extent the Fund's Index is concentrated in a particular industry or group of industries, the Fund's investments will exceed this 25% limitation to the extent that it is necessary to gain exposure to Index Components to track its Index.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, 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 the Fund's net assets are held in illiquid securities. Illiquid securities 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.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[20]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [21] and the rules and regulations thereunder applicable to a national securities exchange.[22] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[23] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. The Commission notes that the Fund and the Shares must comply with the applicable requirements of NYSE Arca Equities

deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (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; and (iv) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions. The Fund will not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines.

[15] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser will monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

[16] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements will usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap will be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess will be maintained in an account at the Trust's custodian bank.

[17] As an example of the use of such financial instruments, the Fund may use total return swaps on one or more Index Components in order to achieve exposures that are similar to those of the Index.

[18] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[19] Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

[20] *See* Notice and Registration Statement, *supra* notes 3 and 6.

[21] 15 U.S.C. 78f.

[22] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

Rules 5.2(j)(3) and 5.5(g)(2) to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[24] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and for the put options held by the Fund, will be available from the U.S. options exchanges on which they are listed and traded. The Index value will be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time). Pricing information for the Index Components is available from the U.S. options exchanges on which such components are listed and traded, and a list of the Index Components, with percentage weightings, will be available on the Exchange's Web site. In addition, an Intraday Indicative Value (''IIV'') for the Shares will be calculated [25] and widely disseminated at least every 15 seconds during the NYSE Arca Core Trading Session by one or more major market data vendors.[26] The Fund's portfolio holdings, including information regarding its options positions, will be disclosed each day on the Fund's Web site, which Web site information will be publicly available at no charge.[27] The Fund's NAV per Share will be determined once daily as of the close of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern Time) on each day the NYSE is open for trading. BNY, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time), the amount of cash to be deposited in exchange for a Creation Unit [28] and the amount of cash that will be paid by the Fund in respect of redemption requests. 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 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. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV (updated daily), and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and will be made available to all market participants at the same time.[29] If the IIV, the Index value, or the value of the Index Components is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs. If the interruption to the dissemination of the applicable IIV, Index value, or value of the Index Components persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[30] In addition, if the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares on the Exchange until such time as the NAV is available to all market participants. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Index Provider is affiliated with a broker-dealer and will implement a firewall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index. The Exchange further states that the Adviser is affiliated with a broker-dealer and will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.[31] The Commission notes that the Exchange would be able to obtain information with respect to the options comprising the Index and which will be held by the Fund because such options will be listed and traded on U.S. options markets that are members of the Intermarket Surveillance Group (''ISG'').

The Commission notes that, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin.[32] Specifically, the Exchange

[24] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[25] The Exchange will calculate the IIV by dividing the ''Estimated Fund Value'' (as defined below) as of the time of the calculation by the total number of outstanding Shares. ''Estimated Fund Value'' is the sum of the estimated amount of cash held in the Fund's portfolio, the estimated amount of accrued interest owing to the Fund, and the estimated value of the securities held in the Fund's portfolio, minus the estimated amount of liabilities. The IIV will be calculated based on the same portfolio holdings disclosed on the Fund's Web site.

[26] *See* NYSE Arca Equities Rule 5.2(j)(3), Commentaries .01(b)(2) and .01(c). According to the Exchange, several major market data vendors widely disseminate IIVs taken from the CTA or other data feeds. *See* Notice, *supra* note 3, at 64164.

[27] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio.

[28] Creation Units (100,000 Shares) of the Fund generally will be sold for cash only, calculated based on the NAV per Share, multiplied by the number of Shares representing a Creation Unit, plus a transaction fee.

[29] *See* NYSE Arca Equities Rule 5.2(j)(3)(A)(v).

[30] 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 the Fund. Trading in Shares of the 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 Fund's portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[31] The Commission also notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their 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. 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.

[32] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the

will remind ETP Holders that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (a) The customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

As described above, the Fund will seek to track the performance of the Index by selling listed 60-day put options in proportion to their weightings in the Index. If the option's underlying stock declines below the strike price, the option will finish in-the-money and the Fund will be required to buy the underlying stock at the strike price, effectively paying the buyer the difference between the strike price and the closing price. Therefore, by writing a put option, the Fund is exposed to the amount by which the price of the underlying stock is less than the strike price. FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[33] While the Fund will not invest in reverse convertibles, the Fund's options strategies may raise issues similar to those raised in the FINRA Regulatory Notice. Therefore, the Exchange has represented that the Information Bulletin will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

As disclosed in the Registration Statement, the Fund is designed for investors who seek to obtain income through selling put options on select equity securities which the Index Provider determines to have the highest volatility. Because of the high volatility of the stocks underlying the put options sold by the Fund, it is possible that the value of such stocks will decline in sufficient magnitude to trigger the exercise of the put options and cause a loss which may outweigh the income from selling such put options. Accordingly, the Exchange has stated that the Fund should be considered as a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange has represented that the Information Bulletin regarding the Fund will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of U.S. exchange-listed options.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Investment Company Units, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. All Index Components are listed and traded on U.S. options exchanges, which are members of ISG.

(4) 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. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) 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; (c) 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; (d) how information regarding the IIV is disseminated; (e) 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 (f) trading information. The Information Bulletin will also advise ETP Holders of their suitability obligations with respect to recommended transactions to customers in the Shares, and will state that ETP Holders that carry customer accounts should follow the FINRA Regulatory Notice with respect to suitability.

(5) The Index will consist of at least 20 equally-weighted exchange-listed put options, selected in accordance with NYSE Arca's rules-based methodology, and the Fund, under normal circumstances, will invest at least 80% of its total assets in the Index Components and in T-Bills.

(6) The stocks underlying the Index Components must be U.S. exchange listed and must meet the following additional criteria: (1) Minimum market capitalization of at least $5 billion; (2) minimum trading volume of at least 50 million shares during the preceding 6 months; (3) minimum average daily trading volume of one million shares during the preceding 6 months; (4) minimum average daily trading value of at least $10 million during the preceding 6 months; (5) share price of $10 or higher; and (6) the availability of U.S. exchange-listed options.

(7) The Sub-Adviser will seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities. In addition, the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in non-U.S. equity securities.

(9) Swaps, options (other than options in which the Fund principally will invest), and futures contracts will not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills.

(10) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

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customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

[33] NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

(11) For initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act,[34] as provided by NYSE Arca Equities Rule 5.3.

The Commission further notes that the Fund and the Shares must comply with all other requirements as set forth in Exchange rules applicable to Investment Company Units and prior Commission releases relating to, and orders approving, the listing rules (and amendments thereto) applicable to the listing and trading of Investment Company Units. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[35] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[36] that the proposed rule change (SR–NYSEArca–2012–109) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

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[34] 17 CFR 240.10A–3.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68666; File No. SR–NYSEArca-2013–01]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of the Newfleet Multi-Sector Income ETF Under NYSE Arca Equities Rule 8.600

January 16, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2013, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): Newfleet Multi-Sector Income ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 the shares (''Shares'') of the Newfleet Multi-Sector Income ETF (the ''Fund'')[4] under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[5] The Shares will be offered by AdvisorSharesTrust (the ''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.[6]

The investment manager to the Fund will be AdvisorShares Investments LLC (the ''Adviser''). Newfleet Asset Management, LLC will serve as sub-adviser to the Fund (''Sub-Adviser''). Foreside Fund Services, LLC will serve as the distributor for the Fund (''Distributor''). The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund (''Custodian'', ''Transfer Agent'' or ''Administrator'').

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 will 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.[7] In addition,

[4] The Commission has previously approved the listing and trading on the Exchange of other 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); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR–NYSEArca–2009–79) (order approving Exchange listing and trading of five fixed income funds of the PIMCO ETF Trust); 66321 (February 3, 2012) 77 FR 6850 (February 9, 2012) (SR–NYSEArca–2011–95) (order approving Exchange listing and trading of PIMCO Total Return ETF); 66670 (March 28, 2012) 77 FR 20087 (April 3, 2012) (SR–NYSEArca–2012–09) (order approving Exchange listing and trading of PIMCO Global Advantage Inflation-Linked Bond Strategy Fund).

[5] 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.

[6] The Trust is registered under the 1940 Act. On June 25, 2012, 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) and the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[7] 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 the 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. 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