

Reference Price not deviate by 10% or more from any Current Reference Price in the previous 10 minutes, as a condition to the opening auction in a Direct Listing with a Capital Raise.⁸⁵ Specifically, the Exchange's proposal provides that "[t]he Pre-Launch Period shall continue until the Price Volatility Constraint is satisfied."⁸⁶ The Exchange also proposes to disseminate information about whether the Price Volatility Constraint has been satisfied, which, according to the Exchange, "will indicate whether the security is ready to trade," and "will provide investors with notice that the Cross nears execution."⁸⁷ Once the Price Volatility Constraint is satisfied, however, there are additional conditions that must be met before the opening cross will occur and in the intervening period the expected opening auction price may change because orders can continue to be entered and cancelled.⁸⁸ Specifically, the Exchange, in consultation with the financial advisor to the issuer, must make the determination that the security is ready to trade, and several additional conditions specified in proposed Nasdaq Rule 4120(c)(9)(B)(vii) and (viii) must be met, including the potential initiation and conclusion of a Post-Pricing Period.⁸⁹ Thus, it would appear that there could be a substantial price change during the period of time between the Exchange's dissemination of the fact that the Price Volatility Constraint has been satisfied and the actual execution of the opening cross for a Direct Listing with a Capital Raise. In such event, investors could be misled that the opening cross "nears execution" and that the disseminated Current Reference Price will likely be close to the opening auction price when, in fact, the auction may not occur for a considerable time and the opening auction price may differ substantially.

⁸⁵ See *supra* notes 37–39 and accompanying text.

⁸⁶ Proposed Nasdaq Rule 4120(c)(9)(B)(vii).

⁸⁷ Amended Notice, *supra* note 11, 87 FR at 1800–01. See proposed Nasdaq Rule 4120(c)(9)(B)(v) stating that the Price Volatility Constraint "indicates that the security may be ready to trade." See also Nasdaq Letter, at 7 ("Then, Nasdaq will publicly indicate when the Price Volatility Constraint has been met, thus providing investors with real time information that the price discovery process nears completion and the security is ready to trade shortly.")

⁸⁸ The Exchange's proposal states that investors could enter additional orders or cancel existing orders throughout the pre-opening process until the actual opening auction price is calculated; therefore, the Current Reference Price may change throughout this time period. See proposed Nasdaq Rule 4120(c)(9)(B)(v) and (viii)(b).

⁸⁹ These conditions also include a determination that the issuer's CDL Order will be executed in full in the Nasdaq Halt Cross, a price validation test, and satisfaction of the pricing conditions. See proposed Nasdaq Rule 4120(c)(9)(B)(vii).

The Exchange has not addressed this potential discrepancy between the stated purpose of the proposed dissemination of the Price Volatility Constraint, and its potential application in practice, or explained how this result would be consistent with the protection of investors, the public interest, or the other requirements of Section 6(b)(5) of the Exchange Act.

As stated above, under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization that proposed the rule change."⁹⁰ For the foregoing reasons, the Exchange has not met its burden to demonstrate that its proposal is consistent with the Exchange Act. In particular, the Exchange has not adequately demonstrated that its proposal to allow a Direct Listing with a Capital Raise to proceed at an opening auction price that falls outside of the disclosed price range is consistent with investor protection, the public interest, and other relevant provisions of Section 6(b)(5) of the Exchange Act.⁹¹ Accordingly, for the reasons set forth above, the Commission must disapprove the proposed rule change, as modified by Amendment No. 2, because the Exchange has not met its burden to demonstrate that the proposal is consistent with Section 6(b)(5) of the Exchange Act.⁹²

⁹⁰ Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

⁹¹ 15 U.S.C. 78f(b)(5).

⁹² In disapproving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). According to the Exchange, the proposal would give issuers additional flexibility in becoming a public company, and in that way promote competition among service providers, such as underwriters and other advisers, to such companies. See Amended Notice, *supra* note 11, 87 FR at 1804. One commenter expresses its belief that the ability for companies to raise primary capital in a direct listing provides companies with additional choice and flexibility as they consider alternatives to going public and, therefore, helps facilitate capital formation. See Letter from Evan Damast, Global Head of Equity and Fixed Income Syndicate, Morgan Stanley (July 21, 2021); Letter from Evan Damast, Global Head of Equity and Fixed Income Syndicate, Morgan Stanley (February 1, 2022). Another commenter states that adding a primary capital raise to a direct listing would advance the efficiency and openness of the U.S. capital markets and solve a conflict of interest problem. See Letter from Bill Gurley, General Partner, Benchmark (February 2, 2022). See also Letter from Ran D. Ben-Tzur and Jennifer J. Hitchcock, Fenwick & West LLP (February 1, 2022) (stating that the proposal would mitigate issuers' reluctance to use a Direct Listing with a Capital Raise because traditional IPOs are not subject to similar price range limitations); Letter from Barry McCarthy (February 1, 2022) (stating that Direct Listings with a Capital Raise are the next logical evolution of a direct listing, but will not work with the current price range constraints).

III. Conclusion

The Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act,⁹³ that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Exchange Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASDAQ–2021–045), as modified by Amendment No. 2, be, and hereby is, *Disapproved*.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹⁴

Eduardo Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34516; File No. 812–15282]

Northern Lights Fund Trust IV, et al.

February 24, 2022.

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

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1) and 22(d) of the Act and rule 22c–1 under the Act and 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.

SUMMARY OF APPLICATION: Applicants request an order ("Order") that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares ("Shares") redeemable in large aggregations only ("creation units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; and (c) certain affiliated

Another commenter states that it believes the proposal would stimulate a vibrant ecosystem of data and analytics and fintech companies to further refine IPO pricing accuracy and broaden investor participation, thus improving capital intermediation for U.S. markets. See Letter from Burke Dempsey, EVP Head of Investment Banking, Wedbush Securities Inc. (August 9, 2021). For the reasons discussed throughout, however, the Commission is disapproving the proposed rule change because it does not find that the proposed rule change is consistent with the Exchange Act.

⁹³ 15 U.S.C. 78s(b)(2).

⁹⁴ 17 CFR 200.30–3(a)(12).

persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time ("Reference Order").¹

APPLICANTS: Northern Lights Fund Trust IV, First Manhattan Co. and Northern Lights Distributors, LLC.

FILING DATES: The application was filed on November 10, 2021, and amended on February 4, 2022.

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 on any application by emailing the Commission's Secretary at *Secretaries-Office@sec.gov* and serving applicants with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on March 21, 2022, 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 emailing the Commission's Secretary.

ADDRESSES: The Commission: *Secretaries-Office@sec.gov*. Applicants: Wendy Wang, Northern Lights Fund Trust IV, *wwang@ultimusfundsolutions.com*; Benjamin Clammer, First Manhattan Co., *bclammer@firstmanhattan.com*; Kevin Guerette, Northern Lights Distributors, LLC, *kguerette@ultimusfundsolutions.com*; JoAnn M. Strasser, Esq. and Bibb L. Strench, Esq., Thompson Hine LLP, *JoAnn.Strasser@ThompsonHine.com*, *Bibb.Strench@ThompsonHine.com*.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, or Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For applicants' representations, legal analysis, and conditions, please refer to applicants' amended application, dated February 4, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC's Public Reference Room at (202) 551-8090.

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

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94307; File No. S7-24-89]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

February 24, 2022.

I. Introduction

On November 5, 2021,¹ certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq/UTP Plan" or "Plan")² filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 11A of the Securities Exchange Act of 1934

¹ See Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021) ("Cover Letter").

² The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (Apr. 19, 2007), 72 FR 20891 (Apr. 26, 2007).

("Act")³ and Rule 608 of Regulation National Market System ("NMS") thereunder,⁴ a proposal (the "Proposed Amendment") to amend the Nasdaq/UTP Plan.⁵ The Proposed Amendment was published for comment in the **Federal Register** on November 26, 2021.⁶

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁷ to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

II. Summary of the Proposed Amendment⁸

Under the Proposed Amendment, the Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rule ("MDI Rule").⁹ The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rule.¹⁰

The Participants propose a fee structure for the following three categories of consolidated equity market data, which collectively constitute the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:¹¹

(1) Level 1 Service, which would include Top of Book Quotations, Last Sale Price Information, and odd-lot

³ 15 U.S.C 78k-1.

⁴ 17 CFR 242.608.

⁵ The Proposed Amendment was approved and executed by more than the Plan's required two-thirds of the self-regulatory organizations ("SROs") that are participants of the UTP Plan. The participants that approved and executed the amendment (the "Participants") are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAx PEARL, LLC, and Nasdaq BX, Inc.

⁶ See Securities Exchange Act Release No. 93618 (Nov. 19, 2021), 86 FR 67562 (Nov. 26, 2021) ("Notice"). Comments received in response to the Notice are available at <https://www.sec.gov/comments/s7-24-89/s72489.shtml>.

⁷ 17 CFR 242.608(b)(2)(i).

⁸ The full text of the Proposed Amendment appears as Attachment A to the Notice. See Notice, *supra* note 6, 86 FR 67566-68.

⁹ See Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("MDI Rule Release").

¹⁰ See Securities Exchange Act Release No. 93620 (Nov. 19, 2021), 86 FR 67541 (Nov. 26, 2021).

¹¹ 17 CFR 242.600(b)(26).

¹ Precidian ETFs Trust, *et al.*, Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).