

to the requirement that the deficiency not be greater than 5 percent) to post margin in the form of available equity in the margin account or cash or other marginable securities in order to remedy such a deficiency. As a result, TPHs will benefit from a reduction in transaction costs, and to the extent that equity in the margin account is utilized, TPHs will also benefit from a more straightforward process from an operational standpoint with respect to posting required margin.

Lastly, the Commission believes that by imposing the requirement to post margin on protected options or warrant positions that equals the greater of the in-the-money amount of the option or warrant, or the amount by which the aggregate current underlying index value exceeds the absolute value of the protection, while also implementing a requirement that the protection be at all times at least 95% of the aggregate current underlying index value, the proposed rule change addresses the risks associated with protected options or warrant positions (e.g., the risk of exercise of a short position when the option or warrant is in-the-money and tracking error), and appropriately protects investors and the public interest.

Accordingly, for the foregoing reasons, the Commission finds that this proposed rule change is consistent with the Exchange Act.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>38</sup> that the proposed rule change (SR-CBOE-2022-058) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97029; File No. SR-NYSEARCA-2023-16]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of Alger Weatherbie Enduring Growth ETF

March 2, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 16, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 list and trade shares of the following under Rule 8.900-E (Managed Portfolio Shares): Alger Weatherbie Enduring Growth ETF. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

NYSE Arca Rule 8.900-E permits the listing and trading, or trading pursuant to unlisted trading privileges, of

Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.<sup>3</sup> Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade Managed Portfolio Shares of the Alger Weatherbie Enduring Growth ETF (the “Fund”) under Rule 8.900-E.

The Commission has previously approved<sup>4</sup> and noticed for immediate effectiveness<sup>5</sup> rules permitting the listing and trading on the Exchange of Managed Portfolio Shares under NYSE Arca Rule 8.900-E.

<sup>3</sup> Rule 8.900-E(c)(1) provides that the term “Managed Portfolio Share” means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

<sup>4</sup> See Securities Exchange Act Release Nos. 89663 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR-NYSEArca-2020-48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of Gabelli ETFs Under Rule 8.900-E, Managed Portfolio Shares); 90528 (November 30, 2020), 85 FR 78389 (December 4, 2020) (SR-NYSEArca-2020-80) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of Alger Mid Cap 40 ETF and Alger 25 ETF Under Rule 8.900-E); and 90683 (December 16, 2020), 85 FR 83665 (December 22, 2020) (SR-NYSEArca-2020-94) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF Under NYSE Arca Rule 8.900-E).

<sup>5</sup> See Securities Exchange Act Release Nos. 92349 (July 19, 2021), 86 FR 39084 (July 23, 2021) (SR-NYSEArca-2021-54) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the Cambiar Large Cap ETF, Cambiar Small Cap ETF and Cambiar SMID ETF); and 94569 (March 31, 2022), 87 FR 19990 (April 6, 2022) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to List and Trade Shares of the DoubleLine Shiller CAPE U.S. Equities ETF under Rule 8.900-E (Managed Portfolio Shares)).

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> 17 CFR 200.30-3(a)(12).

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

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

### Description of the Fund and the Trust

The shares of the Fund (the “Shares”) will be issued by The Alger ETF Trust (the “Trust”), a business trust organized under the laws of the state of Massachusetts and registered with the Commission as an open-end management investment company.<sup>6</sup> The investment adviser to the Fund will be Fred Alger Management, LLC (the “Adviser”). Fred Alger & Company, LLC (the “Distributor”) will serve as the distributor for the Fund’s Shares. All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 8.900–E(b)(1).

Rule 8.900–E(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.<sup>7</sup> Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to

information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Rule 8.900–E(b)(4) is similar to Commentary .03(a)(i) and (iii) to Rule 5.2–E(j)(3); however, Commentary .03(a) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds.<sup>8</sup> Rule 8.900–E(b)(4) is also similar to Commentary .06 to Rule 8.600–E related to Managed Fund Shares, except that Rule 8.900–E(b)(4) relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to an Investment Company’s portfolio and Creation Basket, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund’s portfolio and/or Creation Basket.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly

affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative (as defined below), custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

### Description of the Fund<sup>9</sup>

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.<sup>10</sup>

<sup>9</sup> The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. See 17 CFR 240.10A–3.

<sup>10</sup> Pursuant to the Exemptive Order, the only permissible investments for the Fund are the following that trade on a U.S. exchange contemporaneously with Shares of the Fund: exchange-traded funds (“ETFs”), exchange-traded notes, exchange-listed common stocks, exchange-traded preferred stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metal trusts, exchange-

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 (the “1940 Act”). On November 18, 2022, the Trust filed a registration statement on Form N–1A under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act for the Fund (File No. 811–23603) (the “Registration Statement”). The Commission issued an order granting exemptive relief to the Trust (“Exemptive Order”) under the 1940 Act on May 19, 2020 (Investment Company Act Release No. 33869). The Exemptive Order was granted in response to the Trust’s application for exemptive relief (the “Exemptive Application”) (File No. 812–15117). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Registration Statement was declared effective by the SEC on February 15, 2023.

<sup>7</sup> Rule 8.900–E(c)(5) provides that the term “Creation Basket” means, on any given business day, the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

<sup>8</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be 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 violations, 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. The Fund will also be required to comply with Exchange rules relating to disclosure, including Rule 5.3–E(i).

According to the Registration Statement, the Fund's primary objective is to seek long-term capital appreciation. The Fund will invest primarily in equity securities of mid-cap growth companies.<sup>11</sup> Under normal circumstances, 80% of companies in the Fund's portfolio, based on net assets, will have an environmental, social and governance ("ESG") rating, as rated by Sustainalytics, a third-party ESG rating agency.

According to the Registration Statement, in effecting its investment strategy, the Adviser will initially employ a fundamental analysis to identify innovative and dynamic companies that demonstrate promising growth potential such as strong earnings growth and sound stock market values. The Adviser will then use Sustainalytics' ESG ratings to determine whether an identified company is an appropriate investment for the Fund, including determining the impact that the investment would have on the Sustainalytics ESG rating of the Fund's portfolio on a weighted average basis. In selecting and monitoring investments for the Fund, the Adviser will conduct due diligence on Sustainalytics, review the Sustainalytics ESG ratings of existing and potential portfolio investments, and separately engage with identified companies to determine whether a company's Sustainalytics ESG rating seems consistent with the company's practices. As part of the Adviser's fundamental analysis when considering investing in a company without a Sustainalytics ESG rating, the Adviser will consider the company's ESG record in addition to the company's overall growth potential.

traded currency trusts, and exchange-traded futures for which the reference asset is one in which the Fund may invest directly, in the case of an index future traded on a U.S. exchange, is based on an index, the components of which are a type of asset in which the Fund could invest directly, as well as cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). All of the equity instruments or futures held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>11</sup> For purposes of the Fund's objective, "mid-cap growth companies" are those companies that, at the time of purchase of the securities, primarily have total market capitalization within the range of (i) companies included in the Russell Midcap Growth Index, as reported by the index at the most recent quarter end, or (ii) \$1 billion to \$25 billion. As of December 31, 2022, the companies in this index ranged from \$735.7 million to \$ 52.8 billion. Because of the Fund's long-term approach to investing, it could have a significant portion of its assets invested in securities of issuers that have appreciated beyond the market capitalization thresholds noted.

The Fund is a non-transparent, actively managed ETF that will not seek to replicate the performance of a specified index.

According to the Registration Statement, the Fund will invest in cash (and cash equivalents) when the Fund is unable to find enough attractive long-term investments to meet its investment objective and/or when it is advisable to do so during times of short-term market volatility. During these times, cash (and cash equivalents) will not exceed 15% of the Fund's assets.

#### Investment Restrictions

The Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.<sup>12</sup>

The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of any securities benchmark index. As noted above, the Fund will not seek to replicate the performance of a specified index.

#### Creations and Redemptions of Shares

Creations and redemptions of Shares will take place as described in Rule 8.900-E. Specifically, in connection with the creation and redemption of Creation Units<sup>13</sup> the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a "Confidential Account").<sup>14</sup> An

<sup>12</sup> See note 10, *supra*.

<sup>13</sup> Rule 8.900-E(c)(6) provides that the term "Creation Unit" means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash. Rule 8.900-E(c)(7) provides that the term "Redemption Unit" means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash. For purposes of this filing, the terms "Creation Unit" means either a Creation Unit as defined in Rules 8.900-E(c)(6), or a Redemption Unit as defined in Rule 8.900-E(c)(7).

<sup>14</sup> Rule 8.900-E(c)(4) provides that the term "Confidential Account" means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Authorized Participant ("AP"), as defined in the applicable Form N-1A filed with the Commission, will sign an agreement with an AP Representative<sup>15</sup> establishing the Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a participant in the Continuous Net Settlement System of the National Securities Clearing Corporation ("NSCC") or a participant in the Depository Trust Company ("DTC") and must have executed an authorized participant agreement ("Participant Agreement") with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each business day, the Fund's custodian will transmit the composition of the Fund's Creation Basket (as described below) to each AP Representative. This information will permit an AP that has established a Confidential Account with an AP Representative to transact in the underlying securities of the Creation Basket through their AP Representatives, enabling them to engage in in-kind creation or redemption activity without knowing the identity or weighting of those securities. Fund Shares will be issued and redeemed in Creation Units of 12,500 Shares. The size of a Creation Unit is subject to change. The Fund will offer and redeem Creation Units on a continuous basis at the net asset value ("NAV") per Share next determined after receipt of an order in proper form. The Fund's NAV per Share will be determined as of the closing time of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.) on each day that the Exchange is open.

In order to keep costs low and permit the Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. The Fund will issue Creation Units principally in

<sup>15</sup> Rule 8.900-E(c)(3) provides that the term "AP Representative" means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

exchange for (i) the in-kind deposit of a designated portfolio of securities (the "Deposit Securities"), which for each Creation Unit will constitute a substantial replication, or a representation, of the securities included in the Fund's portfolio, and (ii) if applicable, an amount of cash (the "Cash Component"). Together, the Deposit Securities and the Cash Component, if applicable, constitute the "Fund Deposit." The Deposit Securities and the securities that will be delivered in an in-kind transfer in a redemption (the "Fund Securities") will generally be identical, but may not be so under certain circumstances. The Cash Component is an amount equal to the difference between the NAV of the Shares of the Fund (per Creation Unit) and the market value of the Deposit Securities. The Cash Component serves the function of compensating for any differences between the NAV per Creation Unit and the market value of the Deposit Securities.

On each business day, prior to the opening of business on the Exchange (ordinarily, 9:30 a.m. E.T.), the custodian will make available through NSCC the list of the company names and the required number of shares of each Deposit Security, as applicable, and Cash Component, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. The Deposit Securities, as applicable, and Cash Component, as applicable, announced are applicable to purchases of Creation Units until the next-announced composition of the Fund Deposit. When full or partial cash purchases of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases thereof.

On any given business day, the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Fund Securities will be identical to and will correspond pro rata to the positions in the Fund's portfolio (including cash positions), and these instruments may be referred to, in the case of either a purchase or a redemption, as the "Creation Basket."

#### Placement of Purchase Orders

The Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. The Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

A creation transaction generally begins when an AP enters into an irrevocable creation order with the Fund and delivers to the AP Representative the cash necessary to purchase the designated portfolio of securities that constitute the Creation Basket in the Confidential Account. The AP Representative then purchases and delivers the designated portfolio of securities to the Fund's custodian, and the Fund then instructs the custodian to exchange such portfolio of securities for a specified number of Shares in volumes of Creation Units. The AP Representative will seek to assemble the shares of the Creation Basket in a manner that will not reveal its composition. The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in the Fund's prospectus or Statement of Additional Information ("SAI").

The NAV of the Fund is expected to be determined once each business day as of the close of the regular trading session on the Exchange (ordinarily, 4:00 p.m. E.T.). An AP must submit an irrevocable purchase order by the time set forth in the Participant Agreement and/or applicable order form, on any business day in order to receive that business day's NAV. On days when the Exchange closes or is anticipated to close earlier than normal, the Fund may require purchase orders to be placed earlier in the day. The date on which an order to purchase (or redeem, as further described below) Creation Units is received and accepted is referred to as the "Order Placement Date."

Purchases of Shares will be settled in-kind and/or in cash for an amount equal to the applicable NAV per Share purchased plus applicable transaction fees.<sup>16</sup> The Fund may permit full or partial cash purchases of Creation Units of the Fund under the circumstances described above. When full or partial cash purchases of Creation Units are available or specified for the Fund, they will be effected in essentially the same manner as in-kind purchases thereof. In the case of a full or partial cash purchase, the AP, through the AP Representative, must pay the cash equivalent of the Deposit Securities it would otherwise provide through an in-kind purchase, plus the same Cash

Component required to be paid in connection with an in-kind purchase.

#### Authorized Participant Redemption

The Shares may be redeemed to the Fund in Creation Unit size or multiples thereof as described below. Redemption orders of Creation Units must be placed by or through an AP. Creation Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a redemption request in proper form. Orders to redeem Creation Units must be submitted in proper form prior to the time as set forth in the Participant Agreement.

Each business day, prior to the opening of trading on the Exchange (currently 9:30 a.m., Eastern time), the custodian will transmit to each AP Representative the identity and the required number of each Fund Security and, as applicable and under the circumstances described below, the cash value of the Fund Securities that will be applicable to redemption requests for that day, and the amount of the Cash Redemption Amount (as defined below, if any). A redemption transaction generally begins when an AP enters into an irrevocable redemption order with the Fund. The Fund then instructs the custodian to deliver a designated portfolio of securities that constitute the Creation Basket to the appropriate AP Representative's Confidential Account in exchange for the Fund Shares in volumes of Creation Units being redeemed. Orders to redeem Creation Units must be submitted in proper form prior to the time as set forth in the Participant Agreement.

Redemption proceeds for a Creation Unit are paid in-kind, in cash, or combination thereof, as determined by the Trust. With respect to in-kind redemptions of the Fund, redemption proceeds for a Creation Unit will consist of Fund Securities, as announced by the custodian on the business day of the request for redemption received in proper form plus cash in an amount equal to the difference between the NAV of the Shares of the Fund being redeemed, as next determined after a receipt of a request in proper form, and the value of Fund Securities (the "Cash Redemption Amount"), less any fixed redemption transaction fee as set forth below and any applicable additional variable charge as set forth below. In the event that the Fund's securities have a value greater than the NAV of the Shares of the Fund, the Cash Redemption Amount equal to the differential is required to be made by the AP to the Fund. The Participant Agreement signed by each AP will require establishment of a Confidential

<sup>16</sup> To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

#### Net Asset Value

The NAV will be calculated for the Shares of the Fund on each business day. The Fund's NAV is determined as of the close of regular trading on the New York Stock Exchange, normally 4:00 p.m., E.T. The NAV of the Fund's Shares is determined by adding the total value of its assets, subtracting its liabilities and then dividing the result by the number of Shares outstanding.

The assets of the Fund are generally valued each day at the last quoted sales price on each security's primary exchange or official closing price as reported by an independent pricing service on the primary market or exchange on which they are traded, or, in the absence of reported sales, at the most recent bid price. If market prices are not readily available or the Fund thinks that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board.

More information about the valuation of the Fund's holdings can be found in the SAI.

Information regarding the Fund's NAV and how often Shares of the Fund traded at a price above (*i.e.*, at a premium) or below (*i.e.*, at a discount) the Fund's NAV will be available on the Fund's website ([www.alger.com](http://www.alger.com)).

#### Availability of Information

The Fund's website, [www.alger.com](http://www.alger.com), will include the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including the prior business day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>17</sup> and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

Form N-PORT requires reporting of the Fund's complete portfolio holdings on a position-by-position basis on a

quarterly basis within 60 days after fiscal quarter end. Investors can obtain the Fund's SAI, its shareholder reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. The Fund's SAI and shareholder reports are available free upon request from the Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed onscreen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

Information regarding market price and trading volume of the Shares will be continually available to market participants on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Verified Intraday Indicative Value ("VIIV"), as defined in Rule 8.900-E(c)(2),<sup>18</sup> will be widely disseminated by the Reporting Authority<sup>19</sup> and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session.

#### Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in

<sup>18</sup> Rule 8.900-E(c)(2) provides that the term "Verified Intraday Indicative Value" is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

<sup>19</sup> Rule 8.900-E(c)(8) provides that the term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The VIIV will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Core Trading Session and will be disseminated to all market participants at the same time. The VIIV is based on the current market value of the securities in the Fund's portfolio that day. The methodology for calculating the Fund's VIIV will be available on the Fund's website. The VIIV is intended to provide investors and other market participants with a highly correlated per Share value of the underlying portfolio that can be compared to the current market price. Therefore, under normal circumstances the VIIV would be effectively a near real time approximation of the Fund's NAV, which will be computed only once a day, and is available free of charge from one or more market data vendors.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.<sup>20</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in Rule 7.12-E 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. Trading in the Shares will be subject to Rule 8.900-E(d)(2)(C), which sets forth circumstances under which Shares of the Fund will be halted.

Specifically, Rule 8.900-E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental

<sup>17</sup> The Bid/Ask Price of the Fund's Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund or their service providers.

<sup>20</sup> See Rule 7.12-E.

to the maintenance of a fair and orderly market are present.<sup>21</sup>

Rule 8.900–E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange in all trading sessions in accordance with Rule 7.34–E(a). As provided in Rule 7.6–E, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00, for which the MPV for order entry is \$0.0001. A minimum of 50,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

The Shares will conform to the initial and continued listing criteria under Rule 8.900–E, as well as all terms in the Exemptive Order. The Exchange will obtain a representation from the issuer

<sup>21</sup> The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) the intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV.

of the Shares of the Fund that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. As part of these surveillance procedures and consistent with Rule 8.900–E(b)(3) and 8.900–E(d)(2)(B), the Adviser will upon request make available to the Exchange and/or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, the daily portfolio holdings of the Fund. The issuer of the Shares of the Fund will be required to represent to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5–E(m).

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</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.

The Exchange believes that this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Fund would meet each of the rules relating to listing and trading of Managed Portfolio Shares. To the extent that the Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading on the Exchange or commence delisting procedures under Rule 8.900–E(d)(2)(B). Specifically, the Exchange would consider the suspension of trading, and commence delisting proceedings under Rule 8.900–E(d)(2)(B), of the Fund under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund; (b) if the Exchange has halted trading in the Fund because the VIIV is interrupted pursuant to Rule 8.900–E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in the Fund because the net asset value with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900–E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in Shares of the Fund pursuant to Rule 8.900–E(d)(2)(C)(i) and such issue persists past the trading day in which it occurred; (e) if the Fund has failed to file any filings required by the Commission or if the Exchange is aware that the Fund is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 8.900–E are not continuously maintained; (g) if any of the statements

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

of representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules as specified herein to permit the listing and trading of the Fund, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As discussed above, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio and Creation Basket. In the event that (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

In addition, Rule 8.900–E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information

regarding the Fund’s portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 8.900–E is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund because it provides meaningful requirements about both the data that will be made publicly available about the Shares, as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection set forth in Rule 8.900–E(b)(5) will act as a safeguard against misuse and improper dissemination of information related to the Fund’s portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal “fire wall” requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. Accordingly, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Fund and to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange would halt trading under certain circumstances under which trading in the Shares of the Fund may be inadvisable. Specifically, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(i), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or

(b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>24</sup> Additionally, trading in the Shares will be subject to Rule 8.900–E(d)(2)(C)(ii), which provides that the Exchange would halt trading where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The Exchange would halt trading in such Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900–E.<sup>25</sup> The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order.<sup>26</sup> As noted above, FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place

<sup>24</sup> See note 21, *supra*.

<sup>25</sup> The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A–3 under the Act. See 17 CFR 240.10A–3.

<sup>26</sup> See note 10, *supra*.



a comprehensive surveillance sharing agreement.

With respect to trading of Shares of the Fund, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation that the NAV per Share of the Fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, its shareholder reports, its Form N-CSR (filed twice a year), and its Form N-CEN (filed annually). The Fund's SAI and shareholder reports will be available free upon request from the Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov). In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for the Fund will include a prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to

the initial and continued listing criteria under Rule 8.900-E. The Fund's investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of any securities benchmark index.

The Exchange also believes that the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

#### *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 believes the proposed rule change would permit the listing and trading of an additional actively-managed exchange-traded product, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

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

No written comments were solicited or received with respect to the proposed rule change.

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

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>27</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>28</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>29</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>30</sup> the Commission may 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 to allow the Exchange to implement the proposal as soon as possible. The Exchange notes that the Commission has previously issued a notice of filing for immediate effectiveness of a proposed rule change relating to proposed listing on the Exchange of other funds similar to other issues of Managed Portfolio Shares.<sup>31</sup> The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>32</sup>

At any time within 60 days of the filing of such 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. 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,

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>28</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of 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 Exchange has satisfied this requirement.

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>31</sup> See, note 5, *supra*.

<sup>32</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).



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-2023-16 on the subject line.

#### Paper Comments

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

All submissions should refer to File Number SR-NYSEARCA-2023-16. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NYSEARCA-2023-16 and should be submitted on or before March 29, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-04689 Filed 3-7-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97028; File No. SR-MEMX-2023-05]

### Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule

March 2, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 28, 2023, MEMX LLC ("MEMX" or the "Exchange") 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.

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

The Exchange is filing with the Commission a proposed rule change to amend the Exchange's fee schedule applicable to Members<sup>3</sup> (the "Fee Schedule") pursuant to Exchange Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal on March 1, 2023. The text of the proposed rule change is provided in Exhibit 5.

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

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

the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend the Fee Schedule to: (i) reduce the base rebate for executions of orders in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Volume"); (ii) reduce the base rebate for executions of Retail Orders<sup>4</sup> in securities priced at or above \$1.00 per share that add displayed liquidity to the Exchange (such orders, "Added Displayed Retail Volume"); (iii) reduce the base rebates for executions of orders in securities priced at or above \$1.00 per share that add non-displayed liquidity to the Exchange (such orders, "Added Non-Displayed Volume"); (iv) modify the Liquidity Provision Tiers; (v) modify the required criteria under NBBO Setter/Joiner Tier 1; (vi) modify the Non-Display Add Tiers; (vii) modify Liquidity Removal Tier 1 and adopt a new Liquidity Removal Tier 2; (viii) modify the required criteria under the Sub-Dollar Rebate Tier; and (ix) eliminate the special pricing for executions of Pegged Orders<sup>5</sup> with a Midpoint Peg<sup>6</sup> instruction (such orders, "Midpoint Peg Orders") and a time-in-force ("TIF") instruction of IOC<sup>7</sup> or FOK<sup>8</sup> that execute at the midpoint of the national best bid and offer ("NBBO") and remove liquidity from the Exchange upon entry (such orders, "Midpoint Peg IOC/FOK Orders").

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, to which market participants may direct their order flow. Based on publicly

<sup>4</sup> A "Retail Order" means an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization ("RMO"), provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Exchange Rule 11.21(a).

<sup>5</sup> See Exchange Rule 11.6(h).

<sup>6</sup> See Exchange Rule 11.6(h)(2).

<sup>7</sup> See Exchange Rule 11.6(o)(1).

<sup>8</sup> See Exchange Rule 11.6(o)(3).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Exchange Rule 1.5(p).