

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74109; File No. SR-NYSEArca-2014-134)

January 21, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change to List and Trade Shares of the IQ Wilshire Alternative Strategies ETF Under NYSE Arca Equities Rule 8.600

I. Introduction

On November 18, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the IQ Wilshire Alternative Strategies ETF (the “Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on December 8, 2014.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Fund is a series of the IndexIQ Active ETF Trust (the “Trust”).⁵ The Fund is an actively-

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 73716 (December 2, 2014), 79 FR 72723 (“Notice”).

⁵ The Trust is registered under the 1940 Act. On April 25, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N-1A relating to the Fund (File Nos. 333-193560 and 811-22739) (the “Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under

managed exchange-traded fund (“ETF”) and does not seek to replicate the performance of a specified index.

IndexIQ Advisors LLC (the “Adviser”) is the investment adviser for the Fund.⁶ The Exchange states that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer.⁷ The Exchange represents that in the event (a) any of the Adviser, Wilshire or the Underlying Managers is or becomes a broker-dealer or 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, then, to the extent the broker-dealer or affiliated broker-dealer is not a limited purpose broker-dealer used for marketing and not trading purposes, it will implement a firewall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.⁸

the 1940 Act. See Investment Company Act Release No. 30198 (September 10, 2012) (File No. 812-13956).

⁶ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). The Adviser, Wilshire Associates Incorporated (“Wilshire”) and the underlying managers that are sub-advisers to the Fund (the “Underlying Managers”) are each registered as an investment adviser under the Advisers Act. Wilshire will be a sub-adviser to the Fund and, in that role, will evaluate and recommend strategies and Underlying Managers to the Adviser for use by the Fund. Additionally, according to the Exchange, Wilshire will provide recommendations to the Adviser for allocating and reallocating Fund assets among the Underlying Managers. Wilshire will not directly manage any assets of the Fund, although it may provide the Adviser or an Underlying Manager with non-discretionary advice on investment decisions and underlying positions.

⁷ See Notice, supra note 4, 79 FR at 72729.

⁸ See Notice, supra note 4, 79 FR at 72724.

The Bank of New York Mellon (“Administrator”) is the administrator, custodian, transfer agent and securities lending agent for the Fund. ALPS Distributors Inc. is the distributor for the Fund.

The Exchange has made the following representations and statements in describing the Fund and its strategy and characteristics, investments, and investment restrictions.⁹

Fund Strategies and Characteristics

According to the Exchange, the Fund will seek long-term capital appreciation. Under normal circumstances,¹⁰ 100% of the Fund’s assets will be allocated among the Underlying Managers that will employ a variety of alternative investment strategies.¹¹ The Exchange states that in making these allocations, the Advisor will seek to combine the strategies of the Underlying Managers efficiently and systematically so that the Fund will generate a positive total return with relatively low volatility and low sensitivity or correlation to market indices.¹²

⁹ The Commission notes that additional information regarding the IQ Wilshire Alternative Strategies ETF and its shares; investment objectives; strategies; methodology and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. See Notice, supra note 4, and Registration Statement, supra note 5, respectively.

¹⁰ The term “under normal circumstances” includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income 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.

¹¹ According to the Exchange, the investment of Fund assets not allocated to the Underlying Managers may be directly managed by the Advisor, although the Advisor does not currently intend to manage a significant portion of the Fund’s assets directly, and to the extent the Advisor does manage a portion of the Fund’s assets it would invest such assets in the same manner as the Underlying Managers.

¹² See Notice, supra note 4, 79 FR at 72724.

The Exchange states that the Fund and each of its Underlying Managers may use all or some of the following strategies in managing the assets of the Fund: equity hedge (long/short) strategies, relative value strategies, global macro strategies, event driven strategies, opportunistic credit strategies, tactical trading strategies, and liquid alternative beta strategies.¹³ The Fund and each of its Underlying Managers may also add additional strategies in the future. According to the Exchange, the Advisor may allocate 0 to 100 percent of the Fund's assets to any of these strategies or any of the Underlying Managers at any time.

Investments of the Fund

The Exchange states that in implementing the strategies discussed above, the Fund will invest in a portfolio consisting of some or all of the following instruments:

- Exchange-traded equity securities, which will consist of common stocks, preferred stocks, convertible securities, rights and warrants, depositary receipts, ETFs, non-ETF exchange-traded vehicles (“ETVs”), and partnership interests, including master limited partnerships;
- Fixed income securities, which will consist of debt issued by corporations,¹⁴ debt issued by governments, their agencies, instrumentalities, sponsored entities, and political subdivisions, covered bonds, debt participations, convertible bonds, non-investment

¹³ These strategies are discussed in greater detail in the Notice and the Registration Statement. See Notice, supra note 4, and Registration Statement, supra note 5, respectively.

¹⁴ According to the Exchange, under normal market circumstances, the Fund generally will seek to invest in corporate bond issuances in developed countries that have at least \$100,000,000 par amount outstanding and at least \$200,000,000 par amount outstanding with respect to corporate bond issuances in emerging market countries. See Notice, supra note 4, 79 FR at 72725, n. 19.

grade securities, senior bank loans, exchange-traded notes, mortgage-backed and other asset-backed securities, and to-be-announced securities;¹⁵

- Currencies;
- The following derivative instruments: futures contracts (consisting of futures contracts based on equity or fixed income securities and/or equity or fixed income indices, commodities, interest rates and currencies), swap agreements on any of the following asset classes: equity, fixed income, currency and interest rates (such swaps may be based on the price return or total return of the referenced asset), credit default swaps (consisting of credit default swaps in which the referenced asset is a single fixed income security or a group of fixed income securities), options (consisting of long and short positions in call options and put options on indices based on equities, fixed income securities, interest rates, currencies or commodities, individual securities or currencies, swaptions and options on futures contracts), forward contracts (consisting of forward contracts based on equity or fixed income securities and/or equity or fixed income indices, currencies, interest rates, swap forwards and non-deliverable forwards), and structured securities (such derivative instruments, collectively “Financial Instruments”).¹⁶

The Exchange states that the Fund may use leverage (e.g., through the use of Financial Instruments) to obtain exposure in excess of 100% in an investment. The Fund may employ leverage to increase exposure to the Fund’s portfolio holdings by up to 100% of the net assets of

¹⁵ The Fund will seek to gain exposure to U.S. agency mortgage pass-through securities primarily through the use of “to-be-announced securities.”

¹⁶ As a result of the Fund’s ability to invest in Financial Instruments, it may also hold U.S. Treasury Bills or short-term investments as collateral for the Financial Instruments, including money market funds, repurchase agreements, cash and time deposits.

the Fund to gain additional exposure to the Fund’s portfolio holdings, such that the Fund will have up to 200% net exposure to its investments.

According to the Exchange, the Fund may take long and/or short positions in equity securities, fixed income securities, commodities¹⁷ and currencies, among others.

Investment Restrictions

All equity securities will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the Intermarket Surveillance Group (“ISG”) or a party to a comprehensive surveillance sharing agreement with the Exchange; provided, however, that up to 10% of the assets of the Fund may be invested in non-U.S. listed equity securities that do not meet these requirements.¹⁸

All options contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.¹⁹

Not more than 20% of the Fund’s assets will be invested, in the aggregate, in non-investment grade securities and structured securities.²⁰

Up to 10% of the weight of the futures contracts held by the Fund may consist of futures contracts whose principal trading market is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.²¹

¹⁷ The Fund may gain exposure to commodities through investments in other investment companies, ETFs or ETVs.

¹⁸ See Notice, supra note 4, 79 FR at 72726.

¹⁹ See id.

²⁰ See id.

²¹ See id.

The Fund may invest up to 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. government securities.²²

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities.²³ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in the 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 assets.

The Fund will not invest more than 10% of its net assets in unsponsored depositary receipts.²⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁶ which requires, among other things, that the Exchange's rules be designed 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.

²² See id.

²³ See id.

²⁴ See id.

²⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁶ 15 U.S.C. 78f(b)(5).

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 Exchange Act,²⁷ which sets forth Congress' 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 and underlying securities that are listed on a U.S. exchange will be available via the Consolidated Tape Association high-speed line. Quotation and last-sale information for such U.S. exchange-listed securities as well as futures will be available from the exchange on which they are listed. Quotation and last sale information for options contracts will be available via the Options Price Reporting Authority.

Quotation information for OTC-traded securities and OTC-traded Financial Instruments (such as forwards, swaps and currency-related derivatives), and investment company securities (excluding ETFs), may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements. Quotation information from brokers and dealers or pricing services will be available for spot and forward currency transactions held by the Fund. 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. 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 Commission also 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

²⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. to 4:00 p.m., Eastern Time) on the Exchange, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for a Fund's calculation of NAV at the end of the business day.²⁸ The website information will be publicly available at no charge. The NAV will be calculated by the Administrator and determined each business day as of the close of regular trading on the Exchange (ordinarily 4:00 p.m., Eastern Time). The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.²⁹ The Portfolio Indicative Value of the Fund, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.³⁰ The website for the Fund will include a form of the prospectus for the Fund and additional data relating to the Fund's NAV and other applicable quantitative information.³¹

The Exchange represents that trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.³² Trading also may be

²⁸ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, each Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

²⁹ See Notice, supra note 4, 79 FR at 72728.

³⁰ According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from Consolidated Tape Association or other data feeds. See Notice, supra note 4, 79 FR at 72728, n. 26.

³¹ See Notice, supra note 4, 79 FR at 72729.

³² See Notice, supra note 4, 79 FR at 72728.

halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.³³ Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.³⁴ The Exchange states that the Adviser is a not a registered broker-dealer and is not affiliated with a broker-dealer. The Exchange represents that, in the event (a) the Adviser 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 a firewall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, equity securities, exchange-traded options, futures contracts and options on futures contracts with other markets that are members of the ISG and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, exchange-traded equities, exchange-traded options, futures contracts and options on futures contracts from such markets. In addition, the Exchange may obtain information regarding trading in the Shares, exchange-traded equities, exchange-traded options, futures contracts and options on futures contracts from markets and other entities that are

³³ These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See Notice, supra note 4, 79 FR at 72728.

³⁴ See Notice, supra note 4, 79 FR at 72728.

members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³⁵ FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine.

The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange. 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. In support of this proposal, the Exchange represented that:

- (1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) Trading in the Shares will be subject to the existing trading surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.
- (3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically,

³⁵ For a list of the current members of ISG, see www.isgportal.org.

the Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in creation unit aggregations (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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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.

- (5) For initial and/or continued listing, the Trust will be in compliance with Rule 10A-3³⁶ under the Act, as provided by NYSE Arca Equities Rule 5.3.
- (6) All equity securities will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of the ISG or a party to a comprehensive surveillance sharing agreement with the Exchange; provided, however, that up to 10% of the assets of the Fund may be invested in non-U.S. listed equity securities that do not meet these requirements.
- (7) All options contracts will be listed on a U.S. national securities exchange or a non-U.S. securities exchange that is a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.

³⁶ 17 CFR 240.10A-3.

- (8) Not more than 20% of the Fund's assets will be invested, in the aggregate, in non-investment grade securities and structured securities.
- (9) Not more than 10% of the weight of the futures contracts held by the Fund may consist of futures contracts whose principal trading market is not a member of ISG or a party to a comprehensive surveillance sharing agreement with the Exchange.
- (10) The Fund may invest no more than 20% of its total assets in mortgage-backed securities or in other asset-backed securities, although this 20% limitation will not apply to U.S. government securities.
- (11) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including Rule 144A securities.
- (12) The Fund will not invest more than 10% of its net assets in unsponsored depository receipts will not exceed 10% of a Fund's net assets
- (13) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

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 descriptions of the Funds. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁷ and the rules and regulations thereunder applicable to a national securities exchange.

³⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁸ that the proposed rule change (SR-NYSEArca-2014-134) is hereby approved.

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

Brent J. Fields
Secretary

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).