

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31071; 812-13951]

ValMark Advisers, Inc. and Northern Lights Variable Trust; Notice of Application

June 4, 2014

Agency: Securities and Exchange Commission (“Commission”).

Action: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act.

Summary of Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Applicants: ValMark Advisers, Inc. (“ValMark Advisers” or the “Adviser”) and Northern Lights Variable Trust (the “Trust”).

Filing Dates: The application was filed on August 30, 2011, and amended on December 8, 2011, March 30, 2012, and May 9, 2014.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 30, 2014 and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer’s interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. Applicants: c/o James Ash, Gemini Fund Services, LLC, 450 Wireless Boulevard, Hauppauge, New York 11788.

For Further Information Contact: Deepak T. Pai, Senior Counsel, at (202) 551-6876, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

Supplementary Information: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and is comprised of multiple series, including the TOPS Protected Balanced ETF Portfolio, TOPS Protected Moderate Growth ETF Portfolio, and TOPS Protected Growth ETF Portfolio (collectively, the "Protected Portfolios"). Each series has its own investment objectives, policies and restrictions.<sup>1</sup>

---

<sup>1</sup> Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included within the term "Adviser"); (b) uses the manager of managers structure ("Manager of Managers Structure") described in the application; and (c) complies with the terms and conditions of the application (together with the Protected Portfolios, the "Funds" and each individually, a "Fund"). For the purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All existing investment companies that currently intend to rely on the requested order are named as applicants, and the Protected Portfolios are the only Funds that currently intend to rely on the requested order.

2. ValMark Advisers, an Ohio corporation, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940, as amended (“Advisers Act”). ValMark Advisers serves as the investment adviser of the Protected Portfolios, and an Adviser will serve as investment adviser to the future Funds. The Protected Portfolios have entered into an investment advisory agreement with ValMark Advisers (“Advisory Agreement”)<sup>2</sup>, approved by the Trust’s board of trustees (“Board”),<sup>3</sup> including a majority of the trustees who are not “interested persons,” as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (“Independent Trustees”), and by the shareholders representing a majority of each of the Protected Portfolio’s shares. The terms of each Advisory Agreement comply or will comply with section 15(a) of the Act.

3. Under the terms of the Advisory Agreement, the Adviser is responsible for the overall management of the Protected Portfolios’ business affairs and selecting investments according to each Protected Portfolio’s investment objectives, policies and restrictions. For the investment management services that it provides to the Protected Portfolios, the Adviser receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Adviser to retain one or more subadvisers for the

---

<sup>2</sup> The Adviser will enter into substantially similar investment advisory agreements to provide investment management services to future Funds (“Future Advisory Agreements”). The terms of Future Advisory Agreements will comply with section 15(a) of the Act and Future Advisory Agreements will be approved by shareholders and by the Board, including a majority of the Independent Trustees (as defined below), in the manner required by sections 15(a) and 15(c) of the Act and rule 18f-2 thereunder. References to any Advisory Agreement or Advisory Agreements include Future Advisory Agreements as they pertain to future Funds.

<sup>3</sup> The term “Board” also includes the board of trustees or directors of a future Fund.

purpose of managing the investments of all or a portion of the assets of each Protected Portfolio. Pursuant to this authority, the Adviser has entered into an investment subadvisory agreement with one unaffiliated investment subadviser (“Subadviser”) to provide investment advisory services to the Protected Portfolios (“Subadvisory Agreement”) and intends to enter into Subadvisory Agreements with one or more Subadvisers to provide investment advisory services to the Funds. The Subadviser is, and each future Subadviser will be, an “investment adviser” as defined in section 2(a)(20)(B) of the Act and registered as an investment adviser under the Advisers Act, or not subject to such registration.<sup>4</sup> The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

4. Applicants request an order to permit the Adviser, subject to Board approval, to select Subadvisers and enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The terms of the Subadvisory Agreements comply or will comply fully with the requirements of section 15(a) of the Act. Each Subadvisory Agreement has been, or will be, approved by the Board, including by a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. Each Fund’s prospectus has contained or will contain, at all times following shareholder approval of the Manager of Managers Structure, the disclosure required by condition 2 below.

---

<sup>4</sup> If the name of any Fund contains the name of a Subadviser (as defined below), the name of the Adviser will precede the name of the Subadviser.

5. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (“Affiliated Subadviser”).

6. Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (“Modified Notice and Access Procedures”): (a) within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;<sup>5</sup> and (b) the Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.

Applicants’ Legal Analysis:

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant

---

<sup>5</sup> A “Multi-manager Notice” will be modeled on a Notice of Internet Availability as defined in rule 14a-16 under the Securities Exchange Act of 1934 (“Exchange Act”), and specifically will, among other things: (a) summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds.

A “Multi-manager Information Statement” will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to sections 15(a) and 15(c) of the Act and rule 18f-2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the



outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

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

Kevin M. O'Neill  
Deputy Secretary