

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-68030; File No. SR-NYSEArca-2012-88)

October 10, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Shares of the RiverFront Strategic Income Fund under NYSE Arca Equities Rule 8.600

I. Introduction

On August 10, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the RiverFront Strategic Income Fund (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on August 28, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by ALPS ETF Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The Fund will be managed by WisdomTree Asset

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

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

<sup>3</sup> See Securities Exchange Act Release No. 67715 (August 22, 2012), 77 FR 52083 (“Notice”).

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On February 23, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and under

Management, Inc. (“WisdomTree” or the “Adviser”). RiverFront Investment Group, LLC (“RiverFront”) is the investment sub-adviser for the Fund (the “Sub-Adviser”). The Exchange represents that, while the Adviser is not affiliated with a broker-dealer, the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>5</sup>

#### RiverFront Strategic Income Fund

The investment objective of the Fund is to seek total return with an emphasis on income as the source of that total return by investing in a global portfolio of fixed income securities of various maturities, ratings and currency denominations. The Fund intends to utilize various investment strategies in a broad array of fixed income sectors. The Fund will allocate its investments based upon the analysis of the Sub-Adviser of the pertinent economic and market conditions, as well as yield, maturity and currency considerations.

The Fund may purchase fixed income securities issued by U.S. or foreign corporations<sup>6</sup> or financial institutions, including debt securities of all types and maturities, convertible

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the 1940 Act relating to the Fund (File Nos. 333-148826 and 811-22175) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812-13458).

<sup>5</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

<sup>6</sup> The Fund will invest only in securities that the Adviser or Sub-Adviser deems to be sufficiently liquid. While foreign corporate debt generally must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment, at least 80% of issues of foreign corporate debt held by the Fund will

securities and preferred stocks. The Fund also may purchase securities issued or guaranteed by the U.S. Government or foreign governments (including foreign states, provinces and municipalities) or their agencies and instrumentalities or issued or guaranteed by international organizations designated or supported by multiple government entities to promote economic reconstruction or development. The average maturity or duration of the Fund's portfolio of fixed income securities will vary based on the Sub-Adviser's assessment of economic and market conditions.

The Fund may invest in mortgage-backed securities ("MBS") issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration ("Ginnie Mae"), the Federal Housing Administration ("FHA"), the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac").<sup>7</sup> The MBS in which the Fund may invest will be either pass-through securities or collateralized mortgage obligations ("CMOs").<sup>8</sup> The Fund may purchase or sell securities on a when issued, delayed delivery or forward commitment basis. The

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have \$200 million or more par amount outstanding.

<sup>7</sup> A third-party pricing service will be used to value some or all of the Fund's MBS.

<sup>8</sup> Pass-through securities represent a right to receive principal and interest payments collected on a pool of mortgages, which are passed through to security holders. CMOs are created by dividing the principal and interest payments collected on a pool of mortgages into several revenue streams (tranches) with different priority rights to portions of the underlying mortgage payments. The Fund will not invest in CMO tranches which represent a right to receive interest only ("IOs"), principal only ("POs") or an amount that remains after other floating-rate tranches are paid (an inverse floater). If the Fund invests in CMO tranches (including CMO tranches issued by government agencies) and interest rates move in a manner not anticipated by Fund management, it is possible that the Fund could lose all or substantially all of its investment.

Fund may also invest in other fixed income investment companies, including exchange-traded funds (“ETFs”)<sup>9</sup> and/or closed-end funds.

The Fund may invest without limitation in debt securities denominated in foreign currencies and in U.S. dollar-denominated debt securities of foreign issuers, including securities of issuers located in emerging markets. The Sub-Adviser may attempt to reduce currency risk by entering into contracts with banks, brokers or dealers to purchase or sell securities or foreign currencies at a future date (“forward contracts”). The Fund may enter into foreign currency forward and foreign currency futures contracts to facilitate local securities settlements or to protect against currency exposure in connection with its distributions to shareholders.

The Fund has not established any credit rating criteria for the fixed income securities in which it may invest, and it may invest entirely in high yield securities (“junk bonds”). Junk bonds are debt securities that are rated below investment grade by nationally recognized statistical rating organizations (“NRSROs”), or are unrated securities that the Sub-Adviser believes are of comparable quality. The Sub-Adviser considers the credit ratings assigned by NRSROs as one of several factors in its independent credit analysis of issuers.

The Fund may also invest in money market instruments, including repurchase agreements or other funds which invest exclusively in money market instruments, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular bond or bond index), and, in accordance with the Exemptive Order, in swaps, options and futures contracts. The Fund may also invest in municipal securities. The Fund may invest up to 5% of its assets in MBS (which may include commercial mortgage-backed securities (“CMBS”)) or other asset-backed securities

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<sup>9</sup> The Fund will not invest in leveraged or leveraged inverse ETFs.

issued or guaranteed by private issuers. The Fund may also invest in money market instruments or other short-term fixed income instruments as part of a temporary defensive strategy to protect against temporary market declines.

The Fund may invest in commercial paper and other short-term corporate instruments.<sup>10</sup> The Fund may purchase participations in corporate loans. Participation interests generally will be acquired from a commercial bank or other financial institution (a “Lender”) or from other holders of a participation interest (a “Participant”). The purchase of a participation interest either from a Lender or a Participant will not result in any direct contractual relationship with the borrowing company (the “Borrower”). The Fund generally will have no right directly to enforce compliance by the Borrower with the terms of the credit agreement. Instead, the Fund will be required to rely on the Lender or the Participant that sold the participation interest, both for the enforcement of the Fund’s rights against the Borrower and for the receipt and processing of payments due to the Fund under the loans. Under the terms of a participation interest, the Fund may be regarded as a member of the Participant, and thus the Fund is subject to the credit risk of both the Borrower and a Participant. Participation interests are generally subject to restrictions on resale. Generally, the Fund considers participation interests to be illiquid and therefore subject to the Fund’s percentage limitations for investments in illiquid securities.

The Fund may invest in securities that have variable or floating interest rates which are readjusted on set dates (such as the last day of the month or calendar quarter) in the case of variable rates or whenever a specified interest rate change occurs in the case of a floating rate

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<sup>10</sup> Commercial paper consists of short-term promissory notes issued primarily by corporations. Commercial paper may be traded in the secondary market after its issuance. As of July 31, 2012, the amount of commercial paper outstanding (seasonally adjusted) was approximately \$1000.5 billion. See <http://www.federalreserve.gov/releases/CP/default.htm>.

instrument. Variable or floating interest rates generally reduce changes in the market price of securities from their original purchase price because, upon readjustment, such rates approximate market rates. Accordingly, as interest rates decrease or increase, the potential for capital appreciation or depreciation is less for variable or floating rate securities than for fixed rate obligations. Many securities with variable or floating interest rates purchased by the Fund are subject to payment of principal and accrued interest (usually within seven days) on the Fund's demand. The terms of such demand instruments require payment of principal and accrued interest by the issuer, a guarantor and/or a liquidity provider. The Sub-Adviser will monitor the pricing, quality and liquidity of the variable or floating rate securities held by the Fund.

The Fund may enter into repurchase agreements, which are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they will be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities.

The Fund may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The securities purchased with the funds obtained from the agreement and securities collateralizing the agreement will have maturity dates no later than the repayment date.

The Fund may purchase when-issued securities. Purchasing securities on a "when-issued" basis means that the date for delivery of and payment for the securities is not fixed at the date of purchase, but is set after the securities are issued. The payment obligation and, if applicable, the interest rate that will be received on the securities are fixed at the time the buyer

enters into the commitment. The Fund will only make commitments to purchase such securities with the intention of actually acquiring such securities, but the Fund may sell these securities before the settlement date if it is deemed advisable.

The Fund may not hold more than 15% of its net assets in: (1) illiquid securities (which include participation interests); and (2) Rule 144A securities.<sup>11</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>12</sup>

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund

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<sup>11</sup> Rule 144A securities are securities which, while privately placed, are eligible for purchase and resale pursuant to Rule 144A. According to the Registration Statement, Rule 144A permits certain qualified institutional buyers, such as the Fund, to trade in privately placed securities even though such securities are not registered under the Securities Act.

<sup>12</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

will be in compliance with Rule 10A-3<sup>13</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (“NAV”) and the Disclosed Portfolio will be made available to all market participants at the same time. The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage. The Fund will not invest in non-US equity securities.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes, among other things, can be found in the Notice and Registration Statement, as applicable.<sup>14</sup>

### III. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act<sup>15</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on

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<sup>13</sup> 17 CFR 240.10A-3.

the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>18</sup> 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 will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value ("PIV"), 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 Exchange's Core Trading Session.<sup>19</sup> On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value ("NAV") at the end of the business day.<sup>20</sup> The Fund's custodian will calculate the NAV per Share as of the close of normal

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<sup>14</sup> See Notice and Registration Statement, supra notes 3 and 4, respectively.

<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>19</sup> According to the Exchange, several major market data vendors widely disseminate PIVs taken from CTA or other data feeds. See Notice, supra note 3, 77 FR 52083 at 52087.

<sup>20</sup> On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's website: ticker symbol (if applicable), name of security and financial instrument, number of shares, if applicable, and dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge.

trading on the New York Stock Exchange (normally, 4:00 p.m. Eastern Time) on each day that such exchange is open. In addition, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The website for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information. Intra-day and end-of-day prices for all debt securities or other financial instruments held by the Fund will be available through major market data vendors and broker-dealers. Further, a basket composition file disclosing the Fund's portfolio securities that will be applicable that day to redemption requests, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one "Creation Unit" of the Fund.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>21</sup> In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities

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<sup>21</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>22</sup> The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.<sup>23</sup> The Exchange represents that the Adviser is not affiliated with a broker-dealer. The Exchange further represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.<sup>24</sup> The Commission notes that Adviser and Sub-Adviser personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use

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<sup>22</sup> With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

<sup>23</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

<sup>24</sup> See supra note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the 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.

and dissemination of material, non-public information regarding the Fund’s portfolio.<sup>25</sup> Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>26</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. While not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement, the Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a surveillance sharing agreement.

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

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange’s surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity

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<sup>25</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600.

<sup>26</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, 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 Equity Trading Permit 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 PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that Equity Trading Permit 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 Fund will be in compliance with Rule 10A-3 under the Act,<sup>27</sup> as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund may not hold more than an aggregate amount of 15% of its net assets in illiquid securities (which include participation interests), including Rule 144A securities.
- (7) The Fund will not invest in non-U.S. equity securities.
- (8) The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.
- (9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

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<sup>27</sup> See 17 CFR 240.10A-3.

This approval order is based on the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>28</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>29</sup> that the proposed rule change (SR-NYSEArca-2012-88) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> 15 U.S.C. 78s(b)(2).

<sup>30</sup> 17 CFR 200.30-3(a)(12).