



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77587; File No. SR-NYSEArca-2016-28)

April 12, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On February 5, 2016, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600: RiverFront Dynamic US Dividend Advantage ETF and RiverFront Dynamic US Flex-Cap ETF (each a “Fund,” and collectively, “Funds”). The Commission published notice of the proposed rule change in the Federal Register on February 25, 2016.³ On April 7, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comment on Amendment No. 1 to the proposed rule change from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 34-77183 (February 19, 2016), 81 FR 9535 (February 25, 2016) (NYSEArca-2016-28) (“Notice”).

⁴ Amendment No. 1 replaced and superseded the original filing in its entirety. Amendment No. 1 is available at <http://www.sec.gov/comments/sr-nysearca-2016-28/nysearca201628-1.pdf>.

II. The Exchange's Description of the Proposal⁵

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. The Funds are each a series of 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.⁶ The Funds will be managed by ALPS Advisors, Inc. ("Adviser"). RiverFront Investment Group, LLC ("Sub-Adviser") is the investment sub-adviser for the Funds.⁷

⁵ Additional information regarding the Trust (as defined herein), the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, *supra* note 3, and Registration Statement, *infra* note 6.

⁶ The Exchange states that the Trust is registered under the 1940 Act. According to the Exchange, on December 4, 2015, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) ("Securities Act") and the 1940 Act relating to the Funds (File Nos. 333-148826 and 811-22175) ("Registration Statement"). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust and the Adviser (as defined herein) under the 1940 Act. See Investment Company Act Release No. 30553 (June 11, 2013) (File No. 812-13884) ("Exemptive Order"). The Exchange states that the Funds will be offered in reliance upon the Exemptive Order issued to the Trust and the Adviser.

⁷ The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer but that each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer. The Exchange represents that each of the Adviser and the Sub-Adviser has implemented and will maintain a fire wall with respect to its affiliated broker-dealer(s) regarding access to information concerning the composition and/or changes to a Fund's portfolio. 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, such adviser or sub-adviser will implement a fire wall with respect to such broker-dealer affiliate regarding access to information concerning the composition of 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.

RiverFront Dynamic US Dividend Advantage ETF: Principal Investments

The Exchange states that the investment objective of the Fund will be to seek to provide capital appreciation and dividend income. Under normal market conditions,⁸ the Fund will seek to achieve its investment objective by investing at least 65% of its net assets in a portfolio of exchange-traded equity securities of publicly traded U.S. companies with the potential for dividend growth. The exchange-traded equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares of real estate investment trusts (“REITs”).

The Fund may invest in exchange-traded equities issued by small-, mid-, and large-capitalization companies. The Fund may also invest in other exchange-traded funds (“ETFs”)⁹ and/or exchange-traded closed-end funds (“CEFs”) which invest in equity securities.

The Exchange states that in selecting the Fund’s portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality, and momentum. The Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company’s cash as a percentage of the company’s market capitalization when determining quality, and a

⁸ The term “under normal market conditions” includes, but is not limited to, the absence of extreme volatility or trading halts in the securities markets or the financial markets generally; circumstances under which a Fund’s investments are made for temporary defensive purposes; 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.

⁹ For purposes of this filing, ETFs consist of Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All ETFs will be listed and traded in the U.S. on a national securities exchange. The Funds will not invest in leveraged or leveraged inverse ETFs.

security's three month relative price change when determining momentum. Additionally, within a given sector, security selection will emphasize companies offering a meaningful dividend yield premium over alternative investments within that sector. This dividend yield emphasis is subject to quality screens intended to limit exposure to companies whose financial characteristics suggest the potential for dividend cuts. The Sub-Adviser then assigns each qualifying security a score based on its core attributes, including its dividend growth score, and selects the individual securities with the highest scores for investment. The Exchange states that in doing so, the Sub-Adviser will utilize its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Exchange states that the Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, the potential for dividend income, and the trading volume of a company's shares in the secondary market.

RiverFront Dynamic US Flex-Cap ETF: Principal Investments

The Exchange states that the investment objective of the Fund will be to seek to provide capital appreciation. Under normal market conditions,¹⁰ the Fund will seek to achieve its investment objective by investing at least 65% of its net assets in a portfolio of exchange-traded equity securities of publicly traded U.S. companies. The exchange-traded equity securities the Fund may invest in as part of its principal investments are common stocks and common or preferred shares of REITs.

The Fund may invest in exchange traded equities issued by small-, mid-, and large-capitalization companies. The Fund may also invest in other ETFs¹¹ and/or CEFs which invest in equity securities.

¹⁰ See note 8, supra.

¹¹ See note 9, supra.

The Exchange states that in selecting the Fund's portfolio securities, the Sub-Adviser assembles a portfolio of eligible securities based on several core attributes such as value, quality, and momentum. According to the Exchange, the Sub-Adviser will consider multiple proprietary factors within each core attribute, such as the price-to-book value of a security when determining value, a company's cash as a percentage of the company's market capitalization when determining quality, and a security's three month relative price change when determining momentum. The Sub-Adviser then assigns each qualifying security a score based on its core attributes and selects the individual securities with the highest scores for investment. In doing so, the Sub-Adviser utilizes its proprietary optimization process to maximize the percentage of high-scoring securities included in the portfolio. The Sub-Adviser will also consider the market capitalization of the companies in which the Fund may invest, and the trading volume of a company's shares in the secondary market.

Non-Principal Investments for Each Fund

The Exchange states that while each Fund will, under normal market conditions, principally invest at least 65% of its net assets in the securities and financial instruments as described above, each Fund may invest its remaining assets in the securities and financial instruments described below.

A Fund may invest in other types of equity securities, as follows: non-exchange traded common stock (including REITs), exchange-traded and non-exchange traded preferred stock (including REITs), exchange-traded and non-exchange traded convertible securities, exchange-traded master limited partnerships ("MLPs"), and exchange-traded business development companies ("BDCs").

According to the Exchange, a Fund may invest in exchange-traded or over-the-counter

(“OTC”) equity securities of non-U.S. companies, including issuers in emerging market countries,¹² but investments in non-U.S. securities, including non-U.S. equity securities, may not exceed 20% of a Fund’s net assets, plus the amount of any borrowings for investment purposes, under normal market conditions.¹³

The Exchange states that a Fund may also invest in the following short-term instruments on an ongoing basis to provide liquidity or for other reasons: money market instruments, cash, and cash equivalents. Cash equivalents include the following: (i) short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit, fixed time deposits, and bankers’ acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase “Prime-1” by Moody’s Investors Service, Inc. or “A-1+” or “A-1” by Standard & Poor’s or, if unrated, of comparable quality as determined by the Adviser or Sub-Adviser; (iv) repurchase agreements; and (v) money market mutual funds.

In addition, the Exchange states that a Fund may use derivative instruments. Specifically, a Fund may use options, futures, swaps, and forwards, for hedging or risk management purposes or as part of its investment practices.¹⁴ The Exchange states that a Fund may enter into the

¹² According to the Exchange, the Funds consider an “emerging market country” to be any country whose issuers are included in the Morgan Stanley Capital International Emerging Markets Index and/or those countries considered to be developing by the World Bank, the International Finance Corporation or the United Nations. The Funds consider an “emerging market issuer” to be one (i) domiciled or with a principal place of business or primary securities trading market in an emerging market country, or (ii) that derives a substantial portion of its total revenues or profits from emerging market countries.

¹³ Similarly, at least 80% of each Fund’s net assets, plus the amount of any borrowings for investment purposes, must be invested in the securities of U.S. issuers under normal market conditions. A Fund considers a “U.S. issuer” to be one (i) domiciled or with a principal place of business or primary securities trading market in the United States, or (ii) that derives a substantial portion of its total revenues or profits from the United States.

¹⁴ The Funds will only enter into transactions in derivative instruments with counterparties that the Adviser or Sub-Adviser reasonably believes are capable of performing under the

following derivatives: futures on securities, indices, and currencies, and options on such futures; exchange-traded and OTC options on securities, indices, and currencies; exchange-traded and OTC interest rate swaps, cross-currency swaps, total return swaps, inflation swaps, and credit default swaps; and options on such swaps (“swaptions”).¹⁵ The swaps in which a Fund will invest may be cleared swaps or non-cleared. A Fund may enter into derivatives traded in the U.S. or in non-U.S. countries. A Fund will collateralize its obligations with liquid assets consistent with the 1940 Act and interpretations thereunder.

The Exchange states that a Fund may invest in forward currency contracts. Currency forward contracts may be used to increase or reduce exposure to currency price movements. At the discretion of the Adviser or Sub-Adviser, the Funds may enter into forward currency exchange contracts for hedging purposes to help reduce the risks and volatility caused by changes in foreign currency exchange rates.

A Fund may gain exposure to foreign securities by purchasing U.S. exchange-listed and traded American Depositary Receipts (“ADRs”), non-exchange-listed ADRs, exchange-traded European Depositary Receipts (“EDRs”), and exchange-traded Global Depositary Receipts (“GDRs”, together with ADRs and EDRs, “Depositary Receipts”).¹⁶

The Exchange states that the Funds may invest in Rule 144A restricted securities.

contract and will post collateral as required by the counterparty. The Funds will seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Adviser or Sub-Adviser will evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Adviser or Sub-Adviser will review approved counterparties using various factors, which may include the counterparty’s reputation, the Adviser’s or Sub-Adviser’s past experience with the counterparty and the price/market actions of debt of the counterparty.

¹⁵ Options on swaps are traded OTC. According to the Exchange, in the event that there are exchange-traded options on swaps, a Fund may invest in these instruments.

¹⁶ Non-exchange-listed ADRs will not exceed 10% of a Fund’s net assets.

Investment Restrictions for Each Fund

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities that are offered pursuant to Rule 144A under the Securities Act deemed illiquid by the Adviser or Sub-Adviser.¹⁷ Each 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 a Fund's net assets are held in illiquid assets. Illiquid assets 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.

Each Fund may invest up to 10% of its net assets in equity securities traded OTC.

The Funds intend to qualify for and to elect to be treated as separate regulated investment companies under Subchapter M of the Internal Revenue Code.

Each Fund's investments will be consistent with such Fund's investment objective and will not be used to enhance leverage. That is, while each Fund will be permitted to borrow as permitted under the 1940 Act, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of a Fund's primary broad-based securities

¹⁷ According to the Exchange, in reaching liquidity decisions with respect to Rule 144A securities, the Adviser or Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers willing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

benchmark index (as defined in Form N-1A).¹⁸

Not more than 10% of the net assets of each Fund in the aggregate invested in equity securities (other than non-exchange traded money market funds) shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group (“ISG”) or party to a comprehensive surveillance sharing agreement (“CSSA”) with the Exchange. Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or exchange-traded options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

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.¹⁹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,²⁰ 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 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 also finds that the proposal to list and trade the Shares on the Exchange is consistent

¹⁸ The Exchange states that a Fund’s broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following a Fund’s first full calendar year of performance.

¹⁹ 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).

²⁰ 15 U.S.C. 78f(b)(5).

with Section 11A(a)(1)(C)(iii) of the Exchange Act,²¹ which sets forth the finding of Congress 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.

The Exchange has represented that quotation and last sale information for the Shares, U.S. exchange-traded common stocks, as well as other exchange traded equity securities, including Depositary Receipts (excluding ADRs traded OTC and GDRs), preferred securities, convertible securities, REITs, BDCs, CEFs, ETFs, and MLPs (collectively, “Exchange-Traded Equities”) will be available via the Consolidated Tape Association (“CTA”) high-speed line and from the securities exchanges on which they are listed. The Exchange represents that price information for exchange-traded derivative instruments will be available from the applicable exchange and from major market data vendors. The Exchange states that price information for instruments traded OTC (such as common stock traded OTC (including REITs), non-exchange-listed ADRs, preferred securities (including REITs), convertible securities, and cash equivalents) will be available from major market data vendors. Price information for non-U.S. exchange-traded equity securities will be readily available from the exchanges trading such securities as well as automated quotation systems, published or other public sources, or on-line information services. Price information for money market instruments will be available from major market data vendors. Quotation and last sale information for GDRs will be available from the securities exchanges on which they are listed. Information relating to futures, options on futures, and exchange-traded swaps will be available from the exchange on which such instruments are traded. Price information relating to exchange-traded options will be available via the Options

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Price Reporting Authority. Quotation information from brokers and dealers or pricing services will be available for Rule 144A securities, ADRs traded OTC, and non-exchange-traded derivatives, including forwards, OTC swaps, and OTC options. The Exchange states that pricing information regarding each asset class in which the Funds will invest is generally available through nationally recognized data services providers through subscription agreements.

In addition, the indicative intra-day value, which is the Portfolio Indicative Value, 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.²² On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, each 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 a Fund's calculation of NAV at the end of the business day.²³

The NAV per Share will be calculated by each Fund's custodian and determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m., Eastern Time) on each day that the NYSE is open. A basket composition file, which will

²² Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

²³ On a daily basis, the Adviser or Sub-Adviser will disclose on the Funds' website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value, or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The website information will be publicly available at no charge. The Funds' disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday.

include the security names and share quantities required to be delivered in exchange for each Fund's 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. Information regarding market price and trading volume for 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 website for the Funds will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information.

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 for each Fund will be made available to all market participants at the same time.²⁴

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. 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.²⁵ Trading in the Shares will be subject to NYSE Arca Equities

²⁴ See NYSE Arca Equities Rule 8.600(d)(1)(B).

²⁵ 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.

Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Each of the Adviser and the Sub-Adviser is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a Fund's portfolio.²⁶ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio of each Fund 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.²⁷

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders ("ETP Holders") in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.²⁸

²⁶ See note 7, *supra*. The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

²⁷ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²⁸ The Exchange states that FINRA conducts cross market surveillances of trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange represents that it 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 has also made the following representations:

- 1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- 2) All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.
- 3) The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will monitor²⁹ for compliance with the continued listing requirements. If the Funds are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).
- 4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

²⁹ The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Amendment No. 2 to SR-BATS-2016-04, available at: <http://www.sec.gov/comments/sr-bats-2016-04/bats201604-2.pdf>. In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of the Fund’s compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.

- 5) Trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or 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 deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.
- 6) The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, Exchange-Traded Equities, and certain exchange-traded options and futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, may obtain trading information regarding trading in the Shares, Exchange-Traded Equities, and certain exchange-traded options and futures from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, Exchange-Traded Equities, and certain exchange-traded options and futures from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.
- 7) Prior to the commencement of trading of the Shares, the Exchange will inform its ETP Holders in a 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 units (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 IIV will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value and the Disclosed Portfolio 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.

- 8) For initial and continued listing, each Fund will be in compliance with Rule 10A-3 under the Exchange Act,³⁰ as provided by NYSE Arca Equities Rule 5.3.
- 9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- 10) Under normal market conditions, the RiverFront Dynamic US Dividend Advantage ETF will seek to achieve its investment objective by investing at least 65% of its net assets in a portfolio of exchange-traded equity securities of publicly traded U.S. companies with the potential for dividend growth.
- 11) Under normal market conditions, the RiverFront Dynamic US Flex-Cap ETF will seek to achieve its investment objective by investing at least 65% of its net assets in a portfolio of exchange-traded equity securities of publicly traded U.S. companies.
- 12) Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including securities that are offered pursuant to Rule 144A under the Securities Act deemed illiquid by the Adviser or Sub-Adviser.

³⁰ 17 CFR 240.10A-3.

- 13) Not more than 10% of the net assets of a Fund in the aggregate invested in equity securities (other than non-exchange traded money market funds) shall consist of equity securities whose principal market is not a member of the ISG or party to a CSSA with the Exchange.
- 14) Not more than 10% of the net assets of a Fund in the aggregate invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.
- 15) A Fund's investments in non-U.S. securities, including non-U.S. equity securities, may not exceed 20% of a Fund's net assets, plus the amount of any borrowings for investment purposes, under normal market conditions.
- 16) A Fund may invest up to 10% of its net assets in equity securities traded OTC.
- 17) The Funds will not invest in leveraged or leveraged inverse ETFs.
- 18) A Fund's investments will be consistent with such Fund's investment objective and will not be used to enhance leverage. That is, while a Fund will be permitted to borrow as permitted under the 1940 Act, a Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of a Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment No. 1. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Exchange 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-28 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-2016-28. This file number should be included on the subject line if e-mail 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; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-28 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. Amendment No. 1 revised the proposed rule change by: (1) clarifying the permitted investments of the Funds; (2) modifying the investment restrictions applicable to the Funds; (3) clarifying how certain investments will be valued for computing each Fund's NAV; (4) describing where price information can be obtained for certain investments of the Funds; and (5) providing additional representations relating to the continued listing requirements for listing the Shares on the Exchange, including issuer notification requirements if a Fund fails to comply with such continued listing requirements, and Exchange surveillance obligations relating to such continued listing requirements.

Amendment No. 1 supplements the proposed rule change by, among other things, clarifying the scope of the Funds' permitted investments and investment restrictions and providing additional information about the availability of pricing information for the Funds' underlying assets. It also helps the Commission evaluate whether the listing and trading of the Shares of the Funds would be consistent with the protection of investors and the public interest.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,³¹ to approve the proposed rule change, as modified by Amendment No. 1 on an

³¹ 15 U.S.C. 78s(b)(2).

accelerated basis.

VI.

Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR-NYSEArca-2016-28), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

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

Robert W. Errett
Deputy Secretary

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

