

on the possession of SNM, and not with respect to its use in the operation of the nuclear power reactor. This is true even though the guidance in this regulatory guide is addressed to materials control and accounting at nuclear power plants. This regulatory guide reflects the physical and operational considerations of nuclear power reactors, which are different from other facilities possessing SNM above the part 74 specific threshold. The regulatory guide does not present more stringent guidance for materials licensees who are also power reactor licensees, as compared to guidance for those materials licensees who are not power reactor licensees. Therefore, the NRC does not regard the materials control and accounting requirements in part 74 as a general matter, or as applied to nuclear power reactors in the guidance of RG 5.29, as being within the scope of backfitting or issue finality provisions.

Applicants and potential applicants are not, with certain exceptions, protected by any issue finality provisions under part 52. This is because the issue finality provisions under part 52, with certain exclusions discussed below, were not intended to apply to every NRC action which substantially changes the expectations of current and future applicants. The exceptions to the general principle are whenever an applicant references a part 52 license (e.g., an early site permit) and/or NRC regulatory approval (e.g., a design certification rule) with specified issue finality provisions. However, the scope of issue finality provided extends only to the matters resolved in the license or regulatory approval. Early site permits and design certification rules do not address or resolve compliance with material control and accounting requirements in 10 CFR part 74. Therefore, no applicant referencing an ESP or DCR is protected by relevant issue finality provisions with respect to the material control and accounting matters addressed in this regulatory guide.

Dated at Rockville, Maryland, this 19th day of June, 2013.

For the Nuclear Regulatory Commission.

**Thomas H. Boyce,**

*Chief, Regulatory Guide Development Branch,  
Division of Engineering, Office of Nuclear  
Regulatory Research.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69831; File No. TP 13-03]

### Order Granting Limited Exemptions From Exchange Act Rule 10b-17 and Rules 101 and 102 of Regulation M to ALPS ETF Trust, the VelocityShares Tail Risk Hedged Large Cap ETF, and the VelocityShares Volatility Hedged Large Cap ETF

June 21, 2013.

By letter dated June 21, 2013 (the "Letter"), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ALPS ETF Trust (the "Trust") on behalf of the Trust, the VelocityShares Tail Risk Hedged Large Cap ETF and the VelocityShares Volatility Hedged Large Cap ETF (each a "Fund" and, collectively, the "Funds"), any national securities exchange on or through which shares issued by the Funds ("Shares") may subsequently trade, ALPS Distributors, Inc., and persons or entities engaging in transactions in Shares (collectively, the "Requestors") requested exemptions, or interpretive or no-action relief, from Rule 10b-17 of the Securities Exchange Act of 1934, as amended ("Exchange Act") and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares ("Creation Units").

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act"), as an open-end management investment company. Each Fund seeks to track the performance of a particular underlying index ("Index"), which for each Fund is comprised of shares of exchange traded products ("ETPs"). Each Fund's underlying index reflects the performance of a portfolio consisting of an exposure to a large cap equity portfolio, consisting of three underlying ETFs which track the S&P 500 index ("Underlying Large-Cap ETFs") and a volatility strategy to hedge "tail risk" events (which are market events that occur rarely but may have severe consequences when they do occur), consisting of two underlying ETFs which reflect leveraged or inverse positions on the S&P 500 VIX Short-Term Futures Index ("Underlying Volatility ETFs"). The underlying index, at each monthly rebalance, consists of an 85% allocation to the Underlying Large-Cap ETFs and a 15% allocation to the Underlying Volatility ETFs. The Funds intend to operate as "ETFs of

ETFs" by seeking to track the performance of the respective underlying Index by investing at least 80% of their assets in the ETPs that comprise each Index. Each Fund also intends to enter into swap agreements designed to provide exposure to (a) the Underlying Volatility ETFs and/or (b) leveraged and/or inverse positions on the S&P 500 VIX Short-Term Futures Index directly. Except for the fact that the Funds will operate as ETFs of ETFs and intend to enter into swaps to obtain the leveraged and/or inverse exposure to the Underlying Volatility ETFs and/or the S&P 500 VIX Short-Term Futures Index, the Funds will operate in a manner identical to the ETPs that comprise each Index.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value ("NAV") and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Funds will be listed and traded on the NYSE Arca (the "Exchange") or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- All ETPs that are invested in by the Funds will meet all conditions set forth in a relevant class relief letter,<sup>1</sup> will have received individual relief from the Commission, or will be able to rely on individual relief even though they are not named parties;
- At least 70% of each Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the "actively-traded securities" definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the

<sup>1</sup> Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Assistant Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

relevant Fund; provided, however, that if the Fund has 200 or more component securities, then 50% of the component securities must meet the actively-traded securities thresholds;

- All the components of each Index will have publicly available last sale trade information;
- The intra-day proxy value of each Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Funds' custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of each Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the Funds' portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Funds, the ability of the Funds and arbitrageurs to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Funds will invest solely in liquid securities;
- The Funds will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between each Fund's market price and its NAV; and
- A close alignment between the market price of Shares and each Fund's NAV is expected.

### Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.<sup>2</sup>

<sup>2</sup> ETFs operate under exemptions from the definitions of "open-end company" under Section 5(a)(1) of the 1940 Act and "redeemable security" under Section 2(a)(32) of the 1940 Act. The ETFs and their securities do not meet those definitions.

### Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any "distribution participant" and its "affiliated purchasers" from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of Regulation M defines "distribution" to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Units of Shares of the Funds and that a close alignment between the market price of Shares and the Funds' NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 101 of Regulation M, pursuant to paragraph (d) of Rule 101 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.<sup>3</sup>

### Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, and any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase

<sup>3</sup> Additionally, we confirm the interpretation that a redemption of Creation Units of Shares of the Funds and the receipt of securities in exchange by a participant in a distribution of Shares of the Funds would not constitute an "attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period" within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Funds and that a close alignment between the market price of Shares and the Funds' NAV is expected, the Commission finds that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust an exemption from Rule 102 of Regulation M, pursuant to paragraph (e) of Rule 102 of Regulation M with respect to transactions in the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

### Rule 10b-17

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). Based on the representations and facts in the Letter, in particular that the concerns that the Commission raised in adopting Rule 10b-17 generally will not be implicated if exemptive relief, subject to the conditions below, is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution,<sup>4</sup> we find that it is appropriate in the public interest, and consistent with the protection of investors, to grant the Trust a conditional exemption from Rule 10b-17.

### Conclusion

*It is hereby ordered*, pursuant to Rule 101(d) of Regulation M, that the Trust is exempt from the requirements of Rules 101 with respect to transactions in the Shares of the Funds as described in the Letter, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution as described in the Letter.

*It is further ordered*, pursuant to Rule 102(e) of Regulation M, that the Trust is exempt from the requirements of Rule

<sup>4</sup> We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Funds. This is because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

102 with respect to transaction in the Shares of the Funds as described in the Letter, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares as described in the Letter.

*It is further ordered*, pursuant to Rule 10b-17(b)(2), that the Trust, subject to the conditions contained in this order, is exempt from the requirements of Rule 10b-17 with respect to transactions in the Shares of the Funds as described in the Letter.

This exemption from Rule 10b-17 is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemption is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Funds under the circumstances described above and in the Letter in the event that any material change occurs with respect to any of the facts presented or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a) and 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**  
*Assistant Secretary.*

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<sup>5</sup> 17 CFR 200.30-3(a)(6) and (9).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69824; File No. SR-NSCC-2013-08]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, To Expand the Analytic Reporting Service To Permit Increased Source Data

June 21, 2013.

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> notice is hereby given that on June 7, 2013, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by NSCC. On June 20, 2013, NSCC filed Amendment No. 1 to the proposed rule change.<sup>3</sup> NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) <sup>4</sup> of the Act and Rule 19b-4(f)(4) <sup>5</sup> thereunder, so that the proposed rule change, as modified by Amendment No. 1, was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Rule 57 of the Rules & Procedures (“Rules”) of NSCC with respect to enhancements to the Analytic Reporting Service of the Insurance and Retirement Processing Services (“I&RS”).

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

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

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

<sup>3</sup> Amendment No. 1 modified Sections 12(d) and (e) of Exhibit 5 to the original proposed rule change filing to (i) reflect the application of those sections to both NSCC Members and Limited Members, and (ii) correct a grammatical error.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>5</sup> 17 CFR 240.19b-4(f)(4).

in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

#### 1. Background

On December 10, 2010, NSCC filed with the Commission proposed rule change SR-NSCC-2010-18 <sup>6</sup> to add a new I&RS service called the Analytic Reporting Service (“Service”). In that filing, NSCC described how the Service aggregates transaction data to produce monthly reports relating to the insurance industry markets (such reports, collectively, “Analytics Data”). To create Analytics Data, a data feed from I&RS’s Financial Activity Reporting (“FAR”) service is transmitted to the Service on a periodic basis. FAR is an NSCC I&RS service that provides I&RS members the ability to transmit insurance transaction data and information between themselves. I&RS members submitting transaction data through FAR can only do so where the counterparty to such transaction is also an I&RS member. By accessing and applying the FAR data feed, the Service uses as its source data actual transaction information, rather than survey results, which gives subscribers of the Service a more efficient, cost effective, and timely benchmarking and other relevant information mechanism, than other similar aggregating services.

However, because the Service’s source data is currently limited solely to transaction data transmitted through FAR, the benefits of the Service cannot be applied to other data sources. Subscribers of the Service, and prospective subscribers, have requested that NSCC enhance the Service to allow for submission of additional source data in order that the Service may provide a more complete view of subscribers’ own business and of the insurance industry generally.

#### 2. The Proposed Rule Change

The proposed rule change will expand the Service to permit for increased source data. Under the proposed rule change, I&RS members may submit their transaction data to NSCC, even where the counterparty to a transaction is not an existing I&RS member, and the proposed rule change will also permit for submission of transaction data by parties that are not existing members of NSCC. Under the proposed rule change, in addition to

<sup>6</sup> Release No. 34-63604 (Dec. 23, 2010), 75 FR 82115 (Dec. 29, 2010).