

and other benefits relating to the custody of fund assets by FCMs. To protect fund assets, the contract must require that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act ("CEA") and the rules under that statute. The contract also must contain a requirement that FCMs obtain an acknowledgment from any clearing organization that the fund's assets are held on behalf of the FCM's customers according to CEA provisions.

Because rule 17f-6 does not impose any ongoing obligations on funds or FCMs, Commission staff estimates there are no costs related to *existing* contracts between funds and FCMs. This estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered "collections of information," the burden hours for compliance are already included in other PRA submissions.<sup>1</sup>

Thus, Commission staff estimates that any burden of the rule would be borne by funds and FCMs entering into *new* contracts pursuant to the rule. Commission staff estimates that approximately 761 fund complexes and 1997 funds currently effect commodities transactions and could deposit margin with FCMs in connection with those transactions pursuant to rule 17f-6.<sup>2</sup> Staff further estimates that of this number, 76 fund complexes and 200 funds enter into new contracts with FCMs each year.<sup>3</sup>

Based on conversations with fund representatives, Commission staff understands that fund complexes typically enter into contracts with FCMs on behalf of all funds in the fund complex that engage in commodities transactions. Funds covered by the contract are typically listed in an attachment, which may be amended to encompass new funds. Commission staff

<sup>1</sup> The rule requires a contract with the FCM to contain two provisions requiring the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the CFTC for its rules.

<sup>2</sup> This estimate is based on the number of funds that reported on Form N-SAR from July 1, 2011–December 31, 2011, in response to items (b) through (i) of question 70, the ability to engage in futures and commodity option transactions.

<sup>3</sup> These estimates are based on the assumption that 10% of fund complexes and funds enter into new FCM contracts each year. This assumption encompasses fund complexes and funds that enter into FCM contracts for the first time, as well as fund complexes and fund that change the FCM with whom they maintain margin accounts for commodities transactions.

estimates that the burden for a fund complex to enter into a contract with an FCM that contains the contract requirements of rule 17f-6 is one hour, and further estimates that the burden to add a fund to an existing contract between a fund complex and an FCM is 6 minutes.

Accordingly, Commission staff estimates that funds and FCMs spend 96 burden hours annually complying with the information collection requirements of rule 17f-6.<sup>4</sup> At \$378 per hour of professional (attorney) time, Commission staff estimates that the annual dollar cost for the 96 hours is \$36,288.<sup>5</sup> These estimates are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Shagufta\\_Ahmed@omb.eop.gov](mailto:Shagufta_Ahmed@omb.eop.gov); and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: July 9, 2012.

**Kevin M. O'Neill,**

*Deputy Secretary.*

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<sup>4</sup> This estimate is based upon the following calculation: (76 fund complexes × 1 hour) + (200 funds × 0.1 hours) = 96 hours.

<sup>5</sup> The \$378 per hour figure for an attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2011*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30130; File No. 812-13957]

### IndexIQ Advisors LLC and IndexIQ Active ETF Trust; Notice of Application

July 9, 2012.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application 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, as well as from certain disclosure requirements.

#### SUMMARY OF THE APPLICATION:

Applicants, including an actively-managed open-end exchange traded fund, request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

**APPLICANTS:** IndexIQ Advisors LLC ("Manager") and IndexIQ Active ETF Trust ("Trust").

**FILING DATES:** The application was filed on September 9, 2011, and amended on March 6, 2012, March 27, 2012, and May 15, 2012.

**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 August 2, 2012, and should be accompanied by proof of service on 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 IndexIQ Advisors LLC, 800 Westchester Avenue, Suite N-611, Rye Brook, New York 10573.

**FOR FURTHER INFORMATION CONTACT:** Emerson S. Davis, Senior Counsel, at (202) 551-6868, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site 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 is organized as a Delaware statutory trust and will be registered under the Act as an open-end management investment company. The Trust plans to offer series ("Funds") that will operate as actively-managed exchange-traded funds ("ETFs") in reliance on an exemptive order,<sup>1</sup> each with its own investment objective, policies and restrictions.

2. IndexIQ Advisors LLC, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Manager will serve as the investment adviser to each Fund. The Manager will have an investment advisory agreement with each Fund (an "Investment Advisory Agreement") approved by the board of trustees of the Trust (the "Board"),<sup>2</sup> including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act (the "Independent Board Members"), and the shareholders of each Fund.<sup>3</sup>

3. Under the Investment Advisory Agreement, the Manager will be responsible for providing a program of continuous investment management to each Fund in accordance with the investment objective, policies and limitations of the Fund. The Investment Advisory Agreement permits the Manager to enter into separate advisory agreements ("Sub-Advisory

Agreements") with sub-advisers ("Sub-Advisers"). The specific investment decisions for each Fund are made by the Manager based on purchase and sale recommendations from one or more Sub-Advisers selected by the Manager to focus on all or a portion of the assets of the Fund or, at the discretion of the Manager, by the Sub-Advisers themselves with respect to the portion of any Fund portfolio allocated to them, subject to the general supervision by the Manager and the Board. The Manager will select Sub-Advisers based on an evaluation of the Sub-Adviser's performance, the Sub-Adviser's fees and services in relation to other investment advisers performing similar services, the nature of the advice provided by the Sub-Adviser and the Sub-Adviser's reputation in the investment community. Sub-Advisers will be subject to approval by the Board, including a majority of the Independent Board Members. The Manager will monitor and evaluate the performance of Sub-Advisers and recommend to the Board their hiring, termination and replacement. The Manager will compensate each Sub-Adviser out of the advisory fees paid to the Manager by the Fund.

4. Applicants request an order to permit the Manager, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund, the Trust or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Funds ("Affiliated Sub-Adviser").

5. Applicants also request an exemption from the various disclosure provisions described below that may require the Funds to disclose fees paid by the Manager to the Sub-Advisers. An exemption is requested to permit a Fund to disclose (both as a dollar amount and as a percentage of the Fund's net assets): (a) the aggregate fees paid to the Manager and any Affiliated Sub-Advisers; and (b) the aggregate fees paid to Sub-Advisers other than Affiliated Sub-Advisers (collectively, "Aggregate Fee Disclosure"). Any Fund that employs an Affiliated Sub-Adviser will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

6. Applicants state that the requested relief is unusual insofar as the requested order seeks relief for an ETF. Applicants note, however, that the requested relief is substantially identical to multimanager relief already granted by the Commission for other ETFs. Applicants believe that operations of the

Funds under the requested order address the concerns historically considered by the Commission when granting identical relief to mutual funds. Applicants believe that similar to shareholders of a mutual fund who may "vote with their feet" by redeeming their individual shares at net asset value ("NAV") if they do not approve of a change in sub-adviser or sub-advisory agreement, Fund shareholders will be able to sell shares in the secondary market at negotiated prices that closely track the relevant Fund's NAV if they do not approve of a change. Applicants state that the Funds will rely on the same delivery mechanisms currently used by certain mutual funds to ensure that shareholders who purchase shares in the secondary market receive a prospectus and all of the information that would have been provided with a proxy statement, except for the modifications discussed below, under the Modified Notice and Access Procedures. Applicants note that the requested relief is not broader in scope than the relief previously granted to mutual funds.

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

2. Form N-1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N-1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 ("Exchange Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

<sup>1</sup> See Application for IndexIQ Advisors LLC, *et al.*, filed with the Commission on September 9, 2011, as amended (File No. 812-13956).

<sup>2</sup> The term "Board" also includes the board of trustees or directors of future Funds.

<sup>3</sup> Applicants also request relief with respect to future Funds and any other existing or future registered open-end management investment company or series thereof that: (a) is advised by IndexIQ Advisors LLC or an entity person controlling, controlled by, or under common control with IndexIQ Advisors LLC (any such entity, included in the term "Manager"); (b) uses the management structure described in the application ("Multi-Manager Structure"); and (c) complies with the terms and conditions contained in the application (included in the term "Funds"). The Trust is the only existing investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser (as defined below), the name of the Manager, including the legal name of the Manager and/or any "doing business as" or business unit names used by the Manager, will precede the name of the Sub-Adviser.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

5. 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 seek the same relief previously granted to mutual funds, and believe that the requested relief is equally appropriate for ETFs. Applicants state that the requested relief meets the necessary standards for the reasons discussed below.

6. Applicants assert that the shareholders rely on the Manager to select and monitor the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants contend that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Investment Advisory Agreements and any Sub-Advisory Agreement with an Affiliated Sub-Adviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Sub-Adviser is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Sub-Adviser pursuant to the following procedures ("Modified Notice and Access Procedures"): (a) Within 90 days after a new Sub-Adviser 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>4</sup> and (b) the Fund will make

the Multi-manager Information Statement available on the Web site 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 Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the 1940 Act before entering into or amending Sub-Advisory Agreements.

8. Applicants assert that many Sub-Advisers use a "posted" rate schedule to set their fees. Applicants state that, while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisers to negotiate lower subadvisory fees with the Manager.

#### 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 the Fund's shares to the public.

2. The prospectus for each Fund relying on the requested order will disclose the existence, substance and

other things: (a) Summarize the relevant information regarding the new Sub-Adviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (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, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

effect of the order. Each Fund relying on the requested order will hold itself out to the public as utilizing the Multi-Manager Structure. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and to recommend their hiring, termination, and replacement.

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

4. The Manager will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without that 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 Board Members and the nomination of new or additional Independent Board Members will be at the discretion of the then-existing Independent Board Members.

6. Whenever a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Board Members, 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 Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. The Manager will provide general management services to each Fund that is sub-advised, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval by the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Sub-Advisers to provide purchase and sale recommendations to the Manager or investment advice to all or a part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the Sub-Advisers' performance; and (e) implement procedures reasonably designed to ensure compliance by the Sub-Advisers with the Fund's investment objective, policies and restrictions.

8. No director, trustee or officer of the Trust or a Fund, or director, manager or officer of the Manager, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Adviser except for: (a) ownership of interests in the Manager or

<sup>4</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

any entity that controls, is controlled by, or is under common control with the Manager; 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 Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in rule 0-1(a)(6) under the Act, has been and will continue to be engaged to represent the Independent Board Members. The selection of such counsel will be within the discretion of the then-existing Independent Board Members.

11. 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.

12. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

13. Whenever a Sub-Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the profitability of the Manager.

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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-67376; File No. SR-NASDAQ-2012-078]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Fee Pilot Program for NASDAQ Last Sale

July 9, 2012.

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 27, 2012, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed

with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority ("FINRA"). The purpose of this proposal is to extend the existing pilot program for three months, from July 1, 2012 to September 30, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

#### 7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [April] *July 1, 2012*, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

- (1)-(2) No change.  
(b)-(c) No change.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.<sup>3</sup>

NLS consists of two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ" data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the "NASDAQ Last Sale for NYSE/Amex" data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information

<sup>3</sup> NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent during 2012.

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

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