

immediately after meeting the Business Combination Condition.

The Exchange believes that it is not unfairly discriminatory to provide SPACs with the applicable services only if and when they meet the Business Combination Condition. The Exchange recognizes that not all SPACs will meet the Business Combination Condition and that some listed SPACs will therefore never become eligible for the services that would be provided to an otherwise similarly qualified operating company. However, given the specific characteristics of the SPAC structure, these services are generally not of any particular value to a SPAC prior to meeting the Business Combination Condition and the Exchange therefore believes that those SPACs that never qualify for the services will not suffer any meaningful detriment as a consequence.

Allowing SPACs up to 30 days after meeting the Business Combination Condition to start using the complimentary products and services is a reflection of the Exchange's experience that it can take companies a period of time to review and complete necessary contracts and training for services following their becoming eligible for those services. Allowing this modest 30 day period, if the company needs it, helps ensure that the company will have the benefit of the full period permitted under the rule to actually use the services, thus giving companies the full intended benefit.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In many cases, SPACs will consider transferring to a new listing venue at the time they meet the Business Combination Condition. The proposed rule change enables the Exchange to compete for the retention of these companies by offering them a package of complimentary products and services that assist their transition to being a publicly listed operating company for the first time. All similarly situated companies are eligible for the same package of services. Therefore, the proposed creation of Section 146 of the Company Guide will increase competition by enabling the Exchange to more effectively compete for listings.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-62 on the subject line.

##### *Paper Comments*

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEMKT-2016-62. This file number should be included on the subject line if email 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 Web site (<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 Web site 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-NYSEMKT-2016-62 and should be submitted on or before September 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>7</sup>

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2016-19894 Filed 8-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 32219; 812-14632]**

### **Davis Fundamental ETF Trust, et al.; Notice of Application**

August 16, 2016.

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

*Action:* Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies ("Funds") to issue shares redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value ("NAV"); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities

<sup>7</sup> 17 CFR 200.30-3(a)(12).

into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds ("Funds of Funds") to acquire shares of the Funds.

*Applicants:* Davis Fundamental ETF Trust (the "Trust"), a Delaware statutory trust, which will be registered under the Act as an open-end management investment company with multiple series, Davis Selected Advisers, L.P. (the "Initial Adviser"), an investment adviser registered under the Investment Advisers Act of 1940, and Foreside Fund Services, LLC (the "Distributor"), a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act").

*Filing Dates:* The application was filed on March 24, 2016, and amended on June 14, 2016 and August 15, 2016.

*Hearing or Notification of Hearing:* An order granting the requested relief 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 September 12, 2016, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, 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, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: 2949 E. Elvira Road, Suite 101, Tucson, Arizona 85756.

*For Further Information Contact:* Hae-Sung Lee, Attorney-Adviser, at (202) 551-7345, or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

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

Summary of the Application

1. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds ("ETFs").<sup>1</sup> Fund shares will be purchased and redeemed at their NAV in Creation Units only. All orders to purchase Creation Units and all redemption requests will be placed by or through an "Authorized Participant", which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions ("Portfolio Instruments"). Each Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments that will form the basis for the Fund's calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments ("Deposit Instruments"), and shareholders redeeming their shares will receive specified instruments ("Redemption Instruments"). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund's portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment companies and issue shares that are redeemable in Creation Units only.

5. Applicants also request an exemption from section 22(d) of the Act and rule 22c-1 under the Act as secondary market trading in shares will take place at negotiated prices, not at a

current offering price described in a Fund's prospectus, and not at a price based on NAV. Applicants state that (a) secondary market trading in shares does not involve a Fund as a party and will not result in dilution of an investment in shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants represent that share market prices will be disciplined by arbitrage opportunities, which should prevent shares from trading at a material discount or premium from NAV.

6. With respect to Funds that hold non-U.S. Portfolio Instruments and that effect creations and redemptions of Creation Units in kind, applicants request relief from the requirement imposed by section 22(e) in order to allow such Funds to pay redemption proceeds within fifteen calendar days following the tender of Creation Units for redemption. Applicants assert that the requested relief would not be inconsistent with the spirit and intent of section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds.

7. Applicants request an exemption to permit Funds of Funds to acquire Fund shares beyond the limits of section 12(d)(1)(A) of the Act; and the Funds, and any principal underwriter for the Funds, and/or any broker or dealer registered under the Exchange Act, to sell shares to Funds of Funds beyond the limits of section 12(d)(1)(B) of the Act. The application's terms and conditions are designed to, among other things, help prevent any potential (i) undue influence over a Fund through control or voting power, or in connection with certain services, transactions, and underwritings, (ii) excessive layering of fees, and (iii) overly complex fund structures, which are the concerns underlying the limits in sections 12(d)(1)(A) and (B) of the Act.

8. Applicants request an exemption from sections 17(a)(1) and 17(a)(2) of the Act to permit persons that are Affiliated Persons, or Second Tier Affiliates, of the Funds, solely by virtue of certain ownership interests, to effectuate purchases and redemptions in-kind. The deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions of Creation Units will be the same for all purchases and redemptions and Deposit Instruments

<sup>1</sup> Applicants request that the order apply to the initial Fund, as well as to future series of the Trust and any future open-end management investment companies or series thereof (each, included in the term "Fund"), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each, an "Adviser") and (b) comply with the terms and conditions of the application.

and Redemption Instruments will be valued in the same manner as those Portfolio Instruments currently held by the Funds. Applicants also seek relief from the prohibitions on affiliated transactions in section 17(a) to permit a Fund to sell its shares to and redeem its shares from a Fund of Funds, and to engage in the accompanying in-kind transactions with the Fund of Funds.<sup>2</sup> The purchase of Creation Units by a Fund of Funds directly from a Fund will be accomplished in accordance with the policies of the Fund of Funds and will be based on the NAVs of the Funds.

9. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act 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. Section 12(d)(1)(J) 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 provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

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

**Robert W. Errett,**

*Deputy Secretary.*

[FR Doc. 2016-19900 Filed 8-19-16; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>2</sup> The requested relief would apply to direct sales of shares in Creation Units by a Fund to a Fund of Funds and redemptions of those shares. Applicants, moreover, are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an Affiliated Person, or a Second-Tier Affiliate, of a Fund of Funds because an Adviser or an entity controlling, controlled by or under common control with an Adviser provides investment advisory services to that Fund of Funds.

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-78593; File No. SR-Phlx-2016-82]

**Self-Regulatory Organizations; NASDAQ PHLX LLC; Notice of Filing of Proposed Rule Change To Adopt a New Exception in Exchange Rule 1000(f) for Sub-MPV Split-Priced Orders**

August 16, 2016.

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 August 3, 2016, NASDAQ PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, 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 the Substance of the Proposed Rule Change**

The Exchange proposes to adopt a new exception in Rule 1000(f) permitting Floor Brokers to execute certain split price orders in the trading crowd rather than electronically through the Options Floor Broker Management System, as described in detail below.

The text of the proposed rule change is set forth below. Proposed new language is underlined.

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**NASDAQ PHLX Rules**

\* \* \* \* \*

**Options Rules**

\* \* \* \* \*

**Rule 1000. Applicability, Definitions and References**

(a)–(e) No change.

(f) All Exchange options transactions shall be executed in one of the following ways[, once the Exchange’s new Options Floor Broker Management System functionality has been operating for a certain period to be established by the Exchange]:

- (i) Automatically by the Exchange Trading System pursuant to Rule 1080 and other applicable options rules;
- (ii) by and among members in the Exchange’s options trading crowd none of whom is a Floor Broker; or

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

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

(iii) through the Options Floor Broker Management System for trades involving at least one Floor Broker. Although Floor Brokers may represent orders in the trading crowd, Floor Brokers are not permitted to execute orders in the Exchange’s options trading crowd, except as follows:

(A) The Exchange may determine to permit executions otherwise than in accordance with subparagraphs (i)–(iii) above respecting an option or all options in the event of a problem with Exchange systems.

(B) In addition, Floor Brokers can execute orders in the options trading crowd pursuant to Rule 1059, Accommodation Transactions (cabinet trades), and Rule 1079, FLEX Equity, Index and Currency Options.

(C) Multi-leg orders with more than 15 legs can be executed in the trading crowd.

(D) The following split price orders that, due to FBMS system limitations, require manual calculation:

(I) simple orders not expressed in the applicable minimum increment (“sub-MPV”) and that cannot be evenly split into two whole numbers to create a price at the midpoint of the minimum increment; and

(II) complex and multi-leg orders with at least one option leg with an odd-numbered volume that must trade at a sub-MPV price or one leg that qualifies under (I) above.

Surveillance staff must approve all executions submitted under this Rule 1000(f)(iii) to validate that each abides by applicable priority and trade through rules, and that rounding of prices is used only where necessary to execute the trade at the MPV, and only to the benefit of a customer order or, where multiple customers’ orders are involved, for the customer order that is earliest in time.

(g) No change.

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**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 Exchange 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 in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.