

*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 purpose of the Act. The proposed rule change is designed to enable all issuers of securities that transfer listing from any other national securities exchange to benefit from the same waiver with respect to Annual Fees for a specified time period. Issuers have the option to list their securities on alternative venues based on the fees charged and the value provided by such venue. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee change imposes a burden on competition. In addition, the waiver of Annual Fees as described herein would apply equally to all issuers.

*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**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>7</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>8</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>9</sup> of the Act to determine whether the proposed rule change should be approved or 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.

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEArca-2017-13 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-2017-13. 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-NYSEArca-2017-13 and should be submitted on or before April 28, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>10</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 32589; 812-14436-01]**

**Olden Lane Securities LLC and Olden Lane Trust**

April 3, 2017.

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

**ACTION:** Notice.

Notice of an application under (a) section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 2(a)(35), 14(a), 19(b), 22(d) and 26(a)(2)(C) of the Act and rules 19b-1 and rule 22c-1 thereunder and (b) sections 11(a) and 11(c) of the Act for approval of certain exchange and rollover privileges.

**APPLICANTS:** Olden Lane Securities LLC ("Olden Lane") and Olden Lane Trust.<sup>1</sup>

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain unit investment trusts ("UIT") to: (a) Impose sales charges on a deferred basis and waive the deferred sales charge in certain cases; (b) offer unitholders certain exchange and rollover options; (c) publicly offer units without requiring the Depositor to take for its own account \$100,000 worth of units; and (d) distribute capital gains resulting from the sale of portfolio securities within a reasonable time after receipt.

**FILING DATES:** The application was filed on April 25, 2015, and amended on December 9, 2016, and March 10, 2017.

**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 April 28, 2017, 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

<sup>1</sup> Applicants also request relief for future unit investment trusts (collectively, with Olden Lane Trust, the "Trusts") and series of the Trusts ("Series") that are sponsored by Olden Lane or any entity controlling, controlled by or under common control with Olden Lane (together with Olden Lane, the "Depositors"). Any future Trust and Series that relies on the requested order will comply with the terms and conditions of the application. All existing entities that currently intend to rely on the requested order are named as applicants.

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, 200 Forrestal Road, Suite 3B, Princeton, NJ 08540.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551-6819, or Robert Shapiro, 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 an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants' Representations

1. Olden Lane Trust is a UIT that is registered under the Act. Any future Trust will be a registered UIT. Olden Lane, a Delaware limited liability company, is registered under the Securities Exchange Act of 1934 as a broker-dealer and is the Depositor of Olden Lane Trust. Each Series will be created by a supplement to a master trust agreement between the Depositor and a banking institution or trust company as trustee.

2. The Depositor acquires a portfolio of securities, which it deposits with the series custodian ("Series Custodian") in exchange for certificates representing units of fractional undivided interest in the Series' portfolio ("Units"). The Units are offered to the public through the Depositor and dealers at a price which, during the initial offering period, is based upon the aggregate market value of the underlying portfolio, or, the aggregate offering side evaluation of the underlying securities if the underlying securities are not listed on a securities exchange, plus a front-end sales charge, a deferred sales charge or both. The maximum sales charge may be reduced in compliance with rule 22d-1 under the Act in certain circumstances, which are disclosed in the Series' prospectus.

3. The Depositor may, but is not legally obligated to, maintain a secondary market for Units of an outstanding Series. Other broker-dealers may or may not maintain a secondary market for Units of a Series. If a secondary market is maintained, investors will be able to purchase Units on the secondary market at the current public offering price plus a front-end

sales charge. If such a market is not maintained at any time for any Series, holders of the Units ("Unitholders") of that Series may redeem their Units through the Series Custodian.

#### A. Deferred Sales Charge and Waiver of Deferred Sales Charge Under Certain Circumstances

1. Applicants request an order to the extent necessary to permit one or more Series to impose a sales charge on a deferred basis ("DSC"). For each Series, the Depositor would set a maximum sales charge per Unit, a portion of which may be collected "up front" (i.e., at the time an investor purchases the Units). The DSC would be collected subsequently in installments ("Installment Payments") as described in the application. The Depositor would not add any amount for interest or any similar or related charge to adjust for such deferral.

2. When a Unitholder redeems or sells Units, the Depositor intends to deduct any unpaid DSC from the redemption or sale proceeds. When calculating the amount due, the Depositor will assume that Units on which the DSC has been paid in full are redeemed or sold first. With respect to Units on which the DSC has not been paid in full, the Depositor will assume that the Units held for the longest time are redeemed or sold first. Applicants represent that the DSC collected at the time of redemption or sale, together with the Installment Payments and any amount collected up front, will not exceed the maximum sales charge per Unit. Under certain circumstances, the Depositor may waive the collection of any unpaid DSC in connection with redemptions or sales of Units. These circumstances will be disclosed in the prospectus for the relevant Series and implemented in accordance with rule 22d-1 under the Act.

3. Each Series offering Units subject to a DSC will state the maximum charge per Unit in its prospectus. In addition, the prospectus for such Series will include the table required by Form N-1A (modified as appropriate to reflect the difference between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment, along with the duration of the collection period. The prospectus also will disclose that portfolio securities may be sold to pay the DSC if distribution income is insufficient and that securities will be sold pro rata, if practicable, otherwise a specific security will be designated for sale.

#### B. Exchange Option and Rollover Option

1. Applicants request an order to the extent necessary to permit Unitholders of a Series to exchange their Units for Units of another Series ("Exchange Option") and Unitholders of a Series that is terminating to exchange their Units for Units of a new Series of the same type ("Rollover Option"). The Exchange Option and Rollover Option would apply to all exchanges of Units sold with a front-end sales charge, a DSC or both.

2. A Unitholder who purchases Units under the Exchange Option or Rollover Option would pay a lower sales charge than that which would be paid for the Units by a new investor. The reduced sales charge will be reasonably related to the expenses incurred in connection with the administration of the DSC program, which may include an amount that will fairly and adequately compensate the Depositor and participating underwriters and brokers for their services in providing the DSC program.

### Applicants' Legal Analysis

#### A. DSC and Waiver of DSC

1. Section 4(2) of the Act defines a "unit investment trust" as an investment company that issues only redeemable securities. Section 2(a)(32) of the Act defines a "redeemable security" as a security that, upon its presentation to the issuer, entitles the holder to receive approximately his or her proportionate share of the issuer's current net assets or the cash equivalent of those assets. Rule 22c-1 under the Act requires that the price of a redeemable security issued by a registered investment company for purposes of sale, redemption or repurchase be based on the security's current net asset value ("NAV"). Because the collection of any unpaid DSC may cause a redeeming Unitholder to receive an amount less than the NAV of the redeemed Units, applicants request relief from section 2(a)(32) and rule 22c-1.

2. Section 22(d) of the Act and rule 22d-1 under the Act require a registered investment company and its principal underwriter and dealers to sell securities only at the current public offering price described in the investment company's prospectus, with the exception of sales of redeemable securities at prices that reflect scheduled variations in the sales load. Section 2(a)(35) of the Act defines the term "sales load" as the difference between the sales price and the portion of the proceeds invested by the

depositor or trustee. Applicants request relief from section 2(a)(35) and section 22(d) to permit waivers, deferrals or other scheduled variations of the sales load.

3. Under section 6(c) of the Act, the Commission may exempt classes of transactions, if and to the extent that 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 state that their proposal meets the standards of section 6(c). Applicants state that the provisions of section 22(d) are intended to prevent (a) riskless trading in investment company securities due to backward pricing, (b) disruption of orderly distribution by dealers selling shares at a discount, and (c) discrimination among investors resulting from different prices charged to different investors. Applicants assert that the proposed DSC program will present none of these abuses. Applicants further state that all scheduled variations in the sales load will be disclosed in the prospectus of each Series and applied uniformly to all investors, and that applicants will comply with all the conditions set forth in rule 22d-1.

4. Section 26(a)(2)(C) of the Act, in relevant part, prohibits a trustee or custodian of a UIT from collecting from the trust as an expense any payment to the trust's depositor or principal underwriter. Because the Series Custodian's payment of the DSC to the Depositor may be deemed to be an expense under section 26(a)(2)(C), applicants request relief under section 6(c) from section 26(a)(2)(C) to the extent necessary to permit the Series Custodian to collect Installment Payments and disburse them to the Depositor. Applicants submit that the relief is appropriate because the DSC is more properly characterized as a sales load.

#### B. Exchange Option and Rollover Option

1. Sections 11(a) and 11(c) of the Act prohibit any offer of exchange by a UIT for the securities of another investment company unless the terms of the offer have been approved in advance by the Commission. Applicants request an order under sections 11(a) and 11(c) for Commission approval of the Exchange Option and the Rollover Option.

#### C. Net Worth Requirement

1. Section 14(a) of the Act requires that a registered investment company have \$100,000 of net worth prior to making a public offering. Applicants

state that each Series will comply with this requirement because the Depositor will deposit more than \$100,000 of securities. Applicants assert, however, that the Commission has interpreted section 14(a) as requiring that the initial capital investment in an investment company be made without any intention to dispose of the investment. Applicants state that, under this interpretation, a Series would not satisfy section 14(a) because of the Depositor's intention to sell all the Units of the Series.

2. Rule 14a-3 under the Act exempts UITs from section 14(a) if certain conditions are met, one of which is that the UIT invest only in "eligible trust securities," as defined in the rule. Applicants state that they may not rely on rule 14a-3 because certain Series (collectively, "Structured Series") will invest all or a portion of their assets in equity securities, debt securities, shares of registered investment companies, Flexible Exchange® Options ("FLEX Options"),<sup>2</sup> or other assets which do not satisfy the definition of eligible trust securities.

3. Applicants request an exemption under section 6(c) of the Act to the extent necessary to exempt the Structured Series from the net worth requirement in section 14(a). Applicants state that the Series and the Depositor will comply in all respects with the requirements of rule 14a-3, except that the Structured Series will not restrict their portfolio investments to "eligible trust securities."

#### D. Capital Gains Distribution

1. Section 19(b) of the Act and rule 19b-1 under the Act provide that, except under limited circumstances, no registered investment company may distribute long-term gains more than once every twelve months. Rule 19b-1(c), under certain circumstances, exempts a UIT investing in eligible trust securities (as defined in rule 14a-3) from the requirements of rule 19b-1. Because the Structured Series do not limit their investments to eligible trust securities, however, the Structured Series will not qualify for the exemption in paragraph (c) of rule 19b-1. Applicants therefore request an exemption under section 6(c) from section 19(b) and rule 19b-1 to the extent necessary to permit capital gains earned in connection with the sale of

<sup>2</sup> Applicants state that a Structured Series will invest in FLEX Options with expiration dates that coincide with the Structured Series' maturity date and any relief granted from the provisions of sections 14(a) and 19(b) of the Act and rule 19b-1 under the Act included in the Order will not extend to any Series that intends to hold a derivative security other than FLEX Options.

portfolio securities to be distributed to Unitholders along with the Structured Series' regular distributions. In all other respects, applicants will comply with section 19(b) and rule 19b-1.

2. Applicants state that their proposal meets the standards of section 6(c). Applicants assert that any sale of portfolio securities would be triggered by the need to meet Trust expenses, Installment Payments, or by redemption requests, events over which the Depositor and the Structured Series do not have control. Applicants further state that, because principal distributions must be clearly indicated in accompanying reports to Unitholders as a return of principal and will be relatively small in comparison to normal dividend distributions, there is little danger of confusion from failure to differentiate among distributions.

#### Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

##### A. DSC Relief and Exchange and Rollover Options

1. Whenever the Exchange Option or Rollover Option is to be terminated or its terms are to be amended materially, any holder of a security subject to that privilege will be given prominent notice of the impending termination or amendment at least 60 days prior to the date of termination or the effective date of the amendment, provided that: (a) No such notice need be given if the only material effect of an amendment is to reduce or eliminate the sales charge payable at the time of an exchange, to add one or more new Series eligible for the Exchange Option or the Rollover Option, or to delete a Series which has terminated; and (b) no notice need be given if, under extraordinary circumstances, either (i) there is a suspension of the redemption of Units of the Series under section 22(e) of the Act and the rules and regulations promulgated thereunder, or (ii) a Series temporarily delays or ceases the sale of its Units because it is unable to invest amounts effectively in accordance with applicable investment objectives, policies and restrictions.

2. An investor who purchases Units under the Exchange Option or Rollover Option will pay a lower sales charge than that which would be paid for the Units by a new investor.

3. The prospectus of each Series offering exchanges or rollovers and any sales literature or advertising that mentions the existence of the Exchange Option or Rollover Option will disclose that the Exchange Option and the

Rollover Option are subject to modification, termination or suspension without notice, except in certain limited cases.

4. Any DSC imposed on a Series' Units will comply with the requirements of subparagraphs (1), (2) and (3) of rule 6c-10(a) under the Act.

5. Each Series offering Units subject to a DSC will include in its prospectus the disclosure required by Form N-1A relating to deferred sales charges (modified as appropriate to reflect the differences between UITs and open-end management investment companies) and a schedule setting forth the number and date of each Installment Payment.

#### B. Net Worth Requirement

Applicants will comply in all respects with the requirements of rule 14a-3 under the Act, except that the Structured Series will not restrict their portfolio investments to "eligible trust securities."

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

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80362; File No. SR-ISEMercury-2017-06]

### Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to "Tick-Worse" Functionality

April 3, 2017.

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 March 28, 2017, ISE Mercury, LLC ("ISE Mercury" or "Exchange") 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 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

The Exchange proposes to (i) request the decommission of "Tick-Worse"

functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) relating to the priority of split price transactions.

The text of the proposed rule change is available on the Exchange's Web site at [www.ise.com](http://www.ise.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### 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.

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

##### 1. Purpose

The purpose of the proposed rule change is to (i) decommission the "Tick-Worse" functionality and (ii) amend Rule 713 (Priority of Quotes and Orders) as it relates to the priority of split price transactions. The proposed changes are discussed below.

##### "Tick-Worse" Functionality

The Exchange currently provides market makers<sup>3</sup> with Tick-Worse functionality, which allows market makers to pre-define the prices and sizes at which the system will automatically move their quotation following an execution that exhausts the size of their existing quotation.<sup>4</sup> As

<sup>3</sup> The term "market makers" refers to "Competitive Market Makers" and "Primary Market Makers" collectively. See Rule 100(a)(25).

<sup>4</sup> Tick-Worse functionality is not currently memorialized in the Exchange's rulebook. In addition, the Exchange will not offer Tick-Worse on the new Nasdaq INET system going forward. On September 30, 2004, International Securities Exchange, LLC ("ISE") filed with the Commission a proposal to codify this functionality in its rulebook, but inadvertently deleted the rule as obsolete rule text in a subsequent proposal filed on December 21, 2012. See Securities Exchange Act Release No. 51050 (January 18, 2005), 70 FR 3758 (January 26, 2005) (SR-ISE-2004-31); Securities Exchange Act Release No. 68570 (January 3, 2013), 78 FR 1901 (January 9, 2013) (SR-ISE-2012-82). The Exchange imported Rule 713 from ISE's rulebook when the Commission granted the Exchange's application for registration as a national securities exchange, which was after the Tick-Worse functionality rule was inadvertently removed from ISE's rules. See Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066

such, when a market maker's quote is traded out, it can be automatically reinstated into the Exchange's order book at the next best price.<sup>5</sup> This optional feature is intended to help market makers meet their continuous quoting obligations under the Exchange's rules<sup>6</sup> when their displayed quotations are exhausted. When a market maker's quote is traded out and automatically reinstated into the Exchange's order book using the Tick-Worse functionality, the reinstated quote will be given priority pursuant to the Exchange's split price priority rule as discussed below.

Due to the lack of demand for the Tick-Worse feature, the Exchange proposes to decommission the use of this functionality as it migrates symbols to INET no later than in 2017 Q3.<sup>7</sup> As discussed above, the Exchange offers the Tick-Worse feature as a voluntary tool for market makers to assist them in meeting their continuous quoting obligations under the Exchange's rules. As such, market makers are not required to use the Exchange-provided functionality and can program their own systems to perform the same functions if they prefer. The Exchange has found that almost all market makers use their own systems rather than the Exchange's Tick-Worse feature to send refreshed quotations when their displayed quotations are exhausted, and therefore members have discontinued use of this functionality. Because the Tick-Worse functionality is currently not memorialized in the Exchange's rules as noted above, there is no text of the proposed rule change. The Exchange will provide advance notice to its Members through an Options Trader Alert of the intent to decommission the Tick-Worse functionality.<sup>8</sup>

(February 4, 2016) (Order Granting Registration as a National Securities Exchange).

<sup>5</sup> Market makers may choose to set Tick-Worse parameters by specifying how many price ticks back, and for what size, the quote is to be reinstated.

<sup>6</sup> Specifically, Primary Market Makers ("PMMs") are required under Rule 804(e)(1) to enter quotations in all of the series listed on the Exchange of the options classes to which they are appointed on a daily basis. Supplementary Material .01 to Rule 804 further requires PMMs to quote 90% of the time their assigned options class is open for trading on the Exchange. As provided in Rule 804(e)(2), Competitive Market Makers ("CMMs") are not required to enter quotations in the options class to which they are appointed, but in the event a CMM does initiate quoting, such CMM is generally required to quote 60% of the time its assigned options class is open for trading on the Exchange.

<sup>7</sup> Currently, this functionality is being used by one market maker on the Exchange.

<sup>8</sup> The Exchange notes that it similarly decommissioned Tick-Worse on ISE Gemini, LLC. Continued

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

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