

The Commission notes that while the proposed rule change provides temporary relief in the event that there are delays in distributing proxy materials as a result of COVID-19, the Exchange and the Commission expect that best efforts will be made to ensure that transmissions of proxy materials will continue to be made prior to the 15th day before the meeting. To the extent that materials cannot be distributed prior to the 15th day, the Commission notes that the conditions set forth above requiring, in part, the intermediary acting on behalf of a member organization to disclose prominently on its website that it is experiencing operational challenges as a result of COVID-19, identify the companies whose proxy distributions are affected, and encourage beneficial owners to submit their vote by electronic or telephone means to ensure their instructions are received in advance of the shareholder meeting should help to ensure beneficial owners have adequate time to review their proxy material and vote on a timely basis.

Moreover, the Commission notes that, as discussed above, proxy materials are delivered electronically to the beneficial owners of 84% of all shares,<sup>14</sup> and that the Exchange expects electronic transmissions of proxy materials to continue to be made within the normal time frames provided by its rule. In addition, according to the Exchange, a significant percentage of shareholders who receive physical distributions of proxy materials and vote, vote through the internet or by phone, so the rule as modified would continue to provide adequate time for most beneficial owners to review their proxy materials and vote on a timely basis.<sup>15</sup> The proposal also only continues to allow member organizations to vote uninstructed shares on routine matters in accordance with Exchange Rule 452. The Commission also notes that the proposal is a temporary measure designed to respond to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the 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 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. 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-NYSE-2020-38 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-NYSE-2020-38. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2020-38 and should be submitted on or before May 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 33852; File No. 812-15117]**

### The Alger ETF Trust, et al.

April 23, 2020.

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

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) 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) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

**Applicants:** The Alger ETF Trust (the "Trust"), Fred Alger Management, LLC (the "Adviser") and Fred Alger & Company, LLC (the "Distributor").

**Summary of Application:** Applicants request an order ("Order") that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares ("Shares") redeemable in large aggregations only ("creation units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units; and (d) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the ActiveShares ETFs to acquire Shares of the ActiveShares ETFs. The Order would incorporate by reference terms and conditions of a previous order

<sup>14</sup> See *supra* note 4.

<sup>15</sup> See *supra* note 6 and accompanying text.

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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

granting the same relief sought by applicants, as that order may be amended from time to time (“Reference Order”).<sup>1</sup>

*Filing Date:* The application was filed on March 27, 2020.

*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 emailing the Commission’s Secretary at *Secretarys-Office@sec.gov* 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 May 18, 2020, 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 emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. Applicants: The Alger ETF Trust, Fred Alger Management, LLC and Fred Alger & Company, LLC, 360 Park Avenue South, New York, New York 10010.

**FOR FURTHER INFORMATION CONTACT:** Marc Mehrespand, Senior Counsel, at (202) 551–8453 or Trace Rakestraw, Branch Chief, at (202) 551–6825 (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 website 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.

*Applicants:*

1. The Trust is a business trust organized under Massachusetts law and will consist of one or more series operating as ActiveShares ETFs. The Trust will be registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the “Initial Fund”). The Funds will operate

as ActiveShares ETFs as described in the Reference Order.<sup>2</sup>

2. The Adviser, a Delaware limited liability company, will be the investment adviser to the Initial Fund. An Adviser (as defined below) will serve as investment adviser to each Fund. The Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a “Sub-Adviser”). Any Sub-Adviser will be registered under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term “Distributor”). Any Distributor will comply with the terms and conditions of the Order.

*Applicants’ Requested Exemptive Relief:*

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) 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) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested Order would permit applicants to offer ActiveShares ETFs. Because the relief requested is the same as the relief granted by the Commission under the Reference Order and because the Adviser has entered into a licensing agreement with Precidian Funds LLC in order to offer ActiveShares ETFs,<sup>3</sup> the Order would incorporate by reference the terms and conditions of the Reference Order.

5. Applicants request that the Order apply to the Initial Fund and to any other existing or future open-end management investment company or

<sup>2</sup> To facilitate arbitrage, an ActiveShares ETF disseminates a “verified intraday indicative value” or “VIIV,” reflecting the value of its portfolio holdings, calculated every second during the trading day. To protect the identity and weightings of its portfolio holdings, an ActiveShares ETF sells and redeems its Shares in creation units to authorized participants only through an unaffiliated broker-dealer acting on an agency basis.

<sup>3</sup> Aspects of the Funds are covered by intellectual property rights, including but not limited to those which are described in one or more patent applications.

series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser (any such entity included in the term “Adviser”); (b) operates as an ActiveShares ETF as described in the Reference Order; and (c) complies with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order (each such company or series and the Initial Fund, a “Fund”).<sup>4</sup>

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, 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. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes 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 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. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c), 17(b) and 12(d)(1)(J) of the Act.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>4</sup> All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and of the Reference Order, which is incorporated by reference into the Order.

<sup>1</sup> Precidian ETFs Trust, *et al.*, Investment Company Act Rel. Nos. 33440 (April 8, 2019) (notice) and 33477 (May 20, 2019) (order).