SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68671; File No. SR–NYSEArca–2012–108]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund Under NYSE Arca Equities Rule 5.2(j)(3)

January 16, 2013.

I. Introduction

On September 27, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index Fund (''Fund'') under NYSE Arca Equities Rule 5.2(j)(3). On October 2, 2012, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1 thereto, was published in the **Federal Register** on October 18, 2012.[4] The Commission received no comments on the proposal. On November 29, 2012, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 thereto.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Shares would be issued by the ALPS ETF Trust (''Trust'').[8] ALPS Advisors, Inc. would be the Fund's investment adviser (''Adviser''), and Rich Investment Solutions, LLC would be the Fund's investment sub-adviser (''Sub-Adviser'').[9] The Bank of New York Mellon (''BNY'') would serve as custodian, fund accounting agent, and transfer agent for the Fund. ALPS Distributors, Inc. would be the Fund's distributor (''Distributor''). NYSE Arca would be the ''Index Provider'' for the Fund.[10]

Description of the Fund

The Fund would seek investment results that correspond generally to the performance, before the Fund's fees and expenses, of the NYSE Arca U.S. Equity Synthetic Reverse Convertible Index (''Index''). The Index reflects the performance of a portfolio consisting of over-the-counter (''OTC'') ''down-and-in put'' options that have been written on 20 of the most volatile U.S. stocks that also have market capitalization of at least $5 billion.

In seeking to replicate, before expenses, the performance of the Index, the Fund would generally sell (*i.e.,* write) 90-day OTC down-and-in put options, as described below, in proportion to their weightings in the Index on economic terms which mirror those of the Index. Each option written by the Fund would be covered through investments in three-month Treasury bills (''T-bills'') at least equal to the Fund's maximum liability under the option (*i.e.,* the strike price). The Sub-Adviser would seek a correlation over time of 0.95 or better between the Fund's performance and the performance of the Index. A figure of 1.00 would represent perfect correlation.[11]

The Exchange submitted this proposed rule change because the Index for the Fund does not meet all of the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of ''US Component Stocks.'' [12] Specifically, Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) sets forth the requirements to be met by components of an index or portfolio of US Component Stocks. Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) states, in relevant part, that the components of an index of US Component Stocks, upon the initial listing of a series of Investment Company Units pursuant to Rule 19b–4(e) under the Exchange Act, shall be NMS Stocks as defined in Rule 600 of Regulation NMS under the Exchange Act.[13] As described further below, the Index consists of OTC down-and-in put options. The Exchange has represented that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index includes OTC down-and-in put options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS.

Index Methodology and Construction

The Index measures the return of a hypothetical portfolio consisting of OTC down-and-in put options which have been written on each of 20 stocks and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange amended the filing to specify that a list of components of the Index (as defined below), with percentage weightings, would be available on the Exchange's Web site, and that the Exchange may halt trading in the Shares (as defined below) if the Index value, or the value of the components of the Index, is not available or not disseminated as required.

[4] *See* Securities Exchange Act Release No. 68043 (October 12, 2012), 77 FR 64153 (''Notice'').

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 68320 (November 29, 2012), 77 FR 72429 (December 5, 2012). The Commission determined that it was appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission designated January 16, 2013 as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On June 22, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A (''Registration Statement'') under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333–148826 and 811–22175). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28262 (May 1, 2008) (File No. 812–13430).

[9] The Adviser is affiliated with a broker-dealer and would implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio. The Sub-Adviser is not affiliated with a broker-dealer. In the event (a) the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it would implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

[10] NYSE Arca is not affiliated with the Trust, the Adviser, the Sub-Adviser, or the Distributor. NYSE Arca is affiliated with a broker-dealer and would implement a fire wall and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

[11] While the Fund would not invest in traditional reverse convertible securities (*i.e.,* those which convert into the underlying stock), the down-and-in put options written by the Fund would have the effect of exposing the Fund to the return of reverse convertible securities (based on equity securities) as if the Fund owned such reverse convertible securities directly.

[12] NYSE Arca Equities Rule 5.2(j)(3) provides that the term ''US Component Stock'' shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[13] *See* 17 CFR 242.600(b)(47) (defining ''NMS Stock'' as any NMS Security other than an option).

a cash position calculated as described below. The 20 stocks that would underlie the options in the Index are those 20 stocks from a selection of the largest capitalized (over $5 billion in market capitalization) stocks which also have listed options and which have the highest volatility, as determined by the Index Provider. These stocks would be required to be NMS stocks, as defined in Rule 600 of Regulation NMS.

A down-and-in option is a contract that becomes a typical option (*i.e.,* the option ''knocks in'' at a predetermined strike price) once the underlying stock declines to a specified price (''barrier price''). These types of options have the same return as ''reverse convertible'' securities, which convert into the underlying stock (or settle in cash) only upon a decline in the value of the underlying stock rather than a rise (as is the case with typical convertible instruments).

Each option included in the Index would be a ''European-style'' option (i.e., an option which can only be exercised at its expiration) with a 90-day term. The strike prices of the option positions included in the Index would be determined based on the closing prices of the options' underlying stocks as of the beginning of each 90-day period. The barrier price of each such option would be 80% of the strike price. At the expiration of each 90-day period, if an underlying stock closes at or below its respective barrier price, a cash settlement payment in an amount equal to the difference between the strike price and the closing price of the stock would be deemed to be made, and the Index value would be correspondingly reduced. If the underlying stock does not close at or below the barrier price, then the option expires worthless and the entire amount of the premium payment would be retained within the Index.

The components of the Index would be OTC down-and-in put options written on 20 NMS stocks selected based on the following screening parameters:

1. U.S. listing of U.S. companies;
2. Publicly listed and traded options available;
3. Market capitalization greater than $5 billion;
4. Top 20 stocks when ranked by 3-month implied volatility;
5. Each underlying NMS stock would have a minimum trading volume of at least 50 million shares for the preceding six months; and
6. Each underlying NMS stock would have a minimum average daily trading volume of at least one million shares and a minimum average daily trading value of at least $10 million for the preceding six months.

The selection of the 20 underlying NMS stocks would occur each quarter (March, June, September, and December) two days prior to the third Friday of the month, in line with option expiration for listed options. The selection of the 20 underlying stocks would not, however, be limited to those with listed options expiring in March, June, September, or December.

The Index value would reflect a cash amount invested in on-the-run three-month T-Bills, plus the premium collected on the short position in the 20 down-and-in put options written by the Index each quarter. The notional amount of each of the 20 down-and-in put options would be equal to 1/20th of the cash amount in the Index at the beginning of each quarter. The cash amount (initially 1,000 for the origination date of the Index) would be incremented by premiums generated each quarter from the 20 down-and-in put options sold, then decremented by cash settlements of any down-and-in put options expiring in-the-money and the distribution amount (as described below). The cash amount would be invested in T-Bills and would accrete by interest earned on the T-Bills.

The End of Day Index Value would be calculated as follows: End of Day Index Value = Beginning of Quarter Index Value + Premium Generated − Option Values + Accrued Interest − distribution amount, where:

- Beginning of Quarter Index Value is 1,000 for the origination date of the Index; thereafter, it is the previous quarter-end End of Day Index Value;
- Premium Generated is the sum of Option Values for each of the 20 down-and-in put options sold by the Index at the end of the previous quarter;
- Option Value is the settlement value of each of the 20 down-and-in put options written by the Index at the end of each quarter. The notional amount of each down-and-in put option sold by the Index for the current quarter is 1/20th of the Beginning of Quarter Index Value;
- Accrued Interest is the daily interest earned on the cash amount held by the Index and invested in T-Bills;
- Cash amount of the Index for any quarter is the Beginning of Quarter Index Value plus the Premium Generated for that quarter; and
- Distribution amount for any quarter and paid out at the beginning of the next quarter is 2.5% of the End of Day Index Value for the final day of the quarter. If such an amount exceeds the amount of the Premium Generated, then the distribution amount would equal the Premium Generated.

A total return level for the Index would be calculated and published at the end of each day. The total return calculation would assume the quarterly index distribution is invested directly in the Index at the beginning of the quarter in which it is paid.

The Exchange has provided the following example. Stock ''ABC'' trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option was written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share) for a premium of $4 per share:

- *Settlement above the barrier price:* If at the end of 90 days the ABC stock closed at any value above the barrier price of $40, then the option would expire worthless and the Index's value would reflect the retention of the $4 per share premium. The Index's value thus would be increased by $4 per share on the ABC option position.
- *Settlement at the barrier price:* If at the end of 90 days ABC closed at the barrier price of $40, then the option would settle in cash at the closing price of $40, and the Index's value would be reduced by $10 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $6 per share on the ABC option position.
- *Settlement below the barrier price:* If at the end of 90 days, ABC closed at $35, then the option would settle in cash at the closing price of $35, and the Index's value would be reduced by $15 per share to reflect the settlement of the option. However, the Index's value would reflect the retention of the $4 per share premium, so the net loss to the Index's value would be $11 per share on the ABC option position.

As discussed above, the Index's value is equal to the value of the options positions comprising the Index, plus a cash position. The cash position starts at a base of 1,000. The cash position is increased by option premiums generated by the option positions comprising the Index and interest on the cash position at an annual rate equal to the three month T-Bill rate. The cash position is decreased by cash settlement on options which ''knock in'' (*i.e.,* where the closing price of the underlying stock at the end of the 90-day period is at or below the barrier price). The cash position is also decreased by a deemed quarterly cash distribution, currently targeted at the rate of 2.5% of the value of the Index. However, if the option premiums generated during the quarter are less

than 2.5%, the deemed distribution would be reduced by the amount of the shortfall.

The Fund's Investments

The Fund, under normal circumstances,[14] would invest at least 80% of its total assets in component securities that comprise the Index and in T-Bills which would be collateral for the options positions. The Fund would enter into the option positions determined by the Index Provider by writing (*i.e.,* selling) OTC 90-day down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index. By writing an option, the Fund would receive premiums from the buyer of the option, which would increase the Fund's return if the option does not ''knock in'' and thus expires worthless. However, if the option's underlying stock declines by a specified amount (or more), the option would ''knock in'' and the Fund would be required to pay the buyer the difference between the option's strike price and the closing price. Therefore, by writing a down-and-in put option, the Fund would be exposed to the amount by which the price of the underlying is less than the strike price. Accordingly, the potential return to the Fund would be limited to the amount of option premiums it receives, while the Fund can potentially lose up to the entire strike price of each option it sells. Further, if the value of the stocks underlying the options sold by the Fund increases, the Fund's returns would not increase accordingly.

Typically, the writer of a put option incurs an obligation to buy the underlying instrument from the purchaser of the option at the option's exercise price, upon exercise by the option purchaser. However, the down-and-in put options to be sold by the Fund would be settled in cash only. The Fund may need to sell down-and-in put options on stocks other than those underlying the option positions contained in the Index if the Fund is unable to obtain a competitive market from OTC option dealers on a stock underlying a particular option position in the Index, thus preventing the Fund from writing an option on that stock.[15]

Every 90 days, the options included within the Index are cash settled or expire, and new option positions are established. The Fund would enter into new option positions accordingly. This 90-day cycle likely would cause the Fund to have frequent and substantial portfolio turnover. If the Fund receives additional inflows (and issues more Shares accordingly in large numbers known as ''Creation Units'') during a 90-day period, the Fund would sell additional OTC down-and-in put options which would be exercised or expire at the end of such 90-day period. Conversely, if the Fund redeems Shares in Creation Unit size during a 90-day period, the Fund would terminate the appropriate portion of the options it has sold accordingly.

Secondary Investment Strategies

The Fund may invest its remaining assets in money market instruments,[16] including repurchase agreements [17] or other funds which invest exclusively in money market instruments, convertible securities, structured notes (notes on which the amount of principal repayment and interest payments are based on the movement of one or more specified factors, such as the movement of a particular stock or stock index), forward foreign currency exchange contracts, and in swaps,[18] options (other than options that the Fund principally would write), and futures contracts.[19] Swaps, options (other than options the the Fund principally would write), and futures contracts (and convertible securities and structured notes) may be used by the Fund in seeking performance that corresponds to the Index and in managing cash flows.[20] The Fund would not invest in money market instruments as part of a temporary defensive strategy to protect against potential stock market declines. The Adviser anticipates that it may take approximately three business days (*i.e.,* each day the New York Stock Exchange (''NYSE'') is open) for additions and deletions to the Index to be reflected in the portfolio composition of the Fund.

The Fund may invest in the securities of other investment companies (including money market funds). Under the 1940 Act, the Fund's investment in investment companies is limited to, subject to certain exceptions, (i) 3% of the total outstanding voting stock of any one investment company, (ii) 5% of the Fund's total assets with respect to any one investment company, and (iii) 10% of the Fund's total assets of investment companies in the aggregate.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund would monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current

[14] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or options markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] The Fund would transact only with OTC options dealers that have in place an International Swaps and Derivatives Association agreement with the Fund.

[16] The Fund may invest a portion of its assets in high-quality money market instruments on an ongoing basis to provide liquidity. The instruments in which the Fund may invest include: (i) Short-term obligations issued by the U.S. Government; (ii) negotiable certificates of deposit (''CDs''), fixed time deposits, and bankers' acceptances of U.S. and foreign banks and similar institutions; (iii) commercial paper rated at the date of purchase ''Prime-1'' by Moody's Investors Service, Inc. or ''A–1+'' or ''A–1'' by Standard & Poor's or, if unrated, of comparable quality as determined by the Adviser; (iv) repurchase agreements; and (v) money market mutual funds. CDs are short-term negotiable obligations of commercial banks. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates. Banker's acceptances are time drafts drawn on commercial banks by borrowers, usually in connection with international transactions.

[17] Repurchase agreements are agreements pursuant to which securities are acquired by the Fund from a third party with the understanding that they would be repurchased by the seller at a fixed price on an agreed date. These agreements may be made with respect to any of the portfolio securities in which the Fund is authorized to invest. Repurchase agreements may be characterized as loans secured by the underlying securities. The Fund may enter into repurchase agreements with (i) member banks of the Federal Reserve System having total assets in excess of $500 million and (ii) securities dealers (''Qualified Institutions''). The Adviser would monitor the continued creditworthiness of Qualified Institutions. The Fund also may enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and have the characteristics of borrowing.

[18] Swap agreements are contracts between parties in which one party agrees to make periodic payments to the other party (''counterparty'') based on the change in market value or level of a specified rate, index, or asset. In return, the counterparty agrees to make periodic payments to the first party based on the return of a different specified rate, index, or asset. Swap agreements would usually be done on a net basis, the Fund receiving or paying only the net amount of the two payments. The net amount of the excess, if any, of the Fund's obligations over its entitlements with respect to each swap would be accrued on a daily basis and an amount of cash or highly liquid securities having an aggregate value at least equal to the accrued excess would be maintained in an account at the Trust's custodian bank.

[19] The Fund may utilize U.S. listed exchange-traded futures. In connection with its management of the Trust, the Adviser has claimed an exclusion from registration as a commodity pool operator under the Commodity Exchange Act (''CEA''). Therefore, it is not subject to the registration and regulatory requirements of the CEA, and there are no limitations on the extent to which the Fund may engage in non-hedging transactions involving futures and options thereon, except as set forth in the Registration Statement.

[20] Swaps, options (other than options that the Fund principally would write), and futures contracts would not be included in the Fund's investment, under normal market circumstances, of at least 80% of its total assets in component securities that comprise the Index and in T-Bills, as described above.

circumstances, an adequate level of liquidity is being maintained, and would consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify for and to elect to be treated as a separate regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended

The Fund would not invest in non-U.S. equity securities. The Fund's investments would be consistent with the Fund's investment objective and would not be used to enhance leverage.

Pricing Fund Shares

The Fund's OTC down-and-in put options on equity securities would be valued pursuant to a third-party option pricing model. Debt securities will be valued at the mean between the last available bid and ask prices for such securities or, if such prices are not available, at prices for securities of comparable maturity, quality, and type. Securities for which market quotations are not readily available, including restricted securities, will be valued by a method that the Fund's Board of Trustees believe accurately reflects fair value. Securities will be valued at fair value when market quotations are not readily available or are deemed unreliable, such as when a security's value or meaningful portion of the Fund's portfolio is believed to have been materially affected by a significant event. Such events may include a natural disaster, an economic event like a bankruptcy filing, trading halt in a security, an unscheduled early market close, or a substantial fluctuation in domestic and foreign markets that has occurred between the close of the principal exchange and the NYSE. In such a case, the value for a security is likely to be different from the last quoted market price. In addition, due to the subjective and variable nature of fair market value pricing, it is possible that the value determined for a particular asset may be materially different from the value realized upon such asset's sale.

Creations and Redemptions of Shares

The Trust would issue and sell Shares of the Fund only in ''Creation Units'' of 100,000 Shares each on a continuous basis through the Distributor, without a sales load, at its net asset value (''NAV'') next determined after receipt, on any business day, of an order in proper form. Creation Units of the Fund generally would be sold for cash only, calculated based on the NAV per Share multiplied by the number of Shares representing a Creation Unit (''Deposit Cash''), plus a transaction fee.

The Custodian, through the National Securities Clearing Corporation (''NSCC''), would make available on each business day, prior to the opening of business on NYSE Arca (currently 9:30 a.m. Eastern Time (''E.T.'')), the amount of the Deposit Cash to be deposited in exchange for a Creation Unit of the Fund.

To be eligible to place orders with the Distributor and to create a Creation Unit of the Fund, an entity must be (i) a ''Participating Party,'' *i.e.,* a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC; or (ii) a Depository Trust Company (''DTC'') participant, and, in each case, must have executed an agreement with the Distributor, with respect to creations and redemptions of Creation Units.

All orders to create Creation Units, whether through a Participating Party or a DTC participant, must be received by the Distributor no later than the closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

Fund Shares may be redeemed only in Creation Units at the NAV next determined after receipt of a redemption request in proper form by the Fund through BNY and only on a business day. The Fund would not redeem Shares in amounts less than a Creation Unit.

With respect to the Fund, BNY, through the NSCC, would make available prior to the opening of business on NYSE Arca (currently 9:30 a.m. E.T.) on each business day, the amount of cash that would be paid (subject to possible amendment or correction) in respect of redemption requests received in proper form on that day (''Redemption Cash'').

The redemption proceeds for a Creation Unit generally would consist of the Redemption Cash, as announced on the business day of the request for redemption received in proper form, less a redemption transaction fee.

Initial and Continued Listing

The Exchange represents that the Shares would conform to the initial and continued listing criteria under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2), except that the Index is comprised of down-and-in put options based on ''US Component Stocks'' [21] rather than US Component Stocks themselves. The Exchange further represents that, for initial and/or continued listing, the Fund would be in compliance with Rule 10A–3 under the Exchange Act,[22] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares would be outstanding at the commencement of trading on the Exchange. The Exchange would obtain a representation from the issuer of the Shares that the NAV would be calculated daily and made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.alpsetfs.com*), which would be publicly available prior to the public offering of the Shares, would include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site would include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[23] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[24]

On a daily basis, the Adviser would disclose for each portfolio security and other financial instrument of the Fund

[21] NYSE Arca Equities Rule 5.2(j)(3) defines the term ''US Component Stock'' to mean an equity security that is registered under Sections 12(b) or 12(g) of the Exchange Act or an American Depositary Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Exchange Act.

[22] 17 CFR 240.10A–3.

[23] The Bid/Ask Price of the Fund would be determined using the mid-point of the highest bid and the lowest offer for Shares on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices would be retained by the Fund and its service providers.

[24] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') would be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund would be able to disclose at the beginning of the business day the portfolio that would form the basis for the NAV calculation at the end of the business day.

the following information: ticker symbol (if applicable), name of security and financial instrument, number of securities or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Fund's portfolio holdings, including information regarding its option positions, would be disclosed each day on the Fund's Web site. The Web site information would be publicly available at no charge.

The NAV per Share for the Fund would be determined once daily as of the close of the NYSE, usually 4:00 p.m. E.T., each day the NYSE is open for trading. NAV per Share would be determined by dividing the value of the Fund's portfolio securities, cash and other assets (including accrued interest), less all liabilities (including accrued expenses), by the total number of Shares outstanding. As discussed above, the OTC down-and-in put options would be valued pursuant to a third-party option pricing model.[25]

Investors could also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports would be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares would be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information would be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares would be available via the Consolidated Tape Association (''CTA'') high-speed line. The value of the Index and the values of the OTC down-and-in put options components in the Index (which would each be weighted at 1/20 of the Index value) would be published by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. E.T. to 4:00 p.m. E.T. A list of components of the Index, with percentage weightings, would be available on the Exchange's Web site. Each of the stocks underlying the OTC down-and-in put options in the Index also would underlie standardized options contracts traded on U.S. options exchanges, which would disseminate quotation and last-sale information with respect to such contracts. In addition, the Intraday Indicative Value would be calculated and disseminated by the Exchange, and widely disseminated by one or more major market data vendors, at least every 15 seconds during the Core Trading Session.[26] The Exchange states that the dissemination of the Intraday Indicative Value would allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and to provide a close estimate of that value throughout the trading day.

Trading Halts

With respect to trading halts, the Exchange states that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[27] Trading in Shares of the Fund would be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Fund's portfolio holdings and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the Intraday Indicative Value, the Index value, or the value of the components of the Index is not available or is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. The Exchange would obtain a representation from the Fund that the NAV for the Fund would be calculated daily and would be made available to all market participants at the same time. Under NYSE Arca Equities Rule 7.34(a)(5), if the Exchange becomes aware that the NAV for the Fund is not being disseminated to all market participants at the same time, it would halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares would trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Investment Company Units) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[28]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts)

[25] *See* ''Pricing Fund Shares'' *supra.*

[26] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values taken from the CTA or other data feeds. *See* Notice, *supra* note 4, at 64157. The IIV calculations are based on local market prices and may not reflect events that occur subsequent to the local market's close. *See* Registration Statement, *supra* note 8, at 11.

[27] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[28] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

provides that an Equity Trading Permit (''ETP'') Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange would inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin (''Information Bulletin'' or ''Bulletin''). Specifically, ETP Holders would be reminded in the Information Bulletin that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin would also provide that members must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has issued a regulatory notice relating to sales practice procedures applicable to recommendations to customers by FINRA members of reverse convertibles, as described in FINRA Regulatory Notice 10–09 (February 2010) (''FINRA Regulatory Notice'').[29] As described above, while the Fund would not invest in traditional reverse convertible securities, the down-and-in put options written by the Fund would have the effect of exposing the Fund to the return of reverse convertible securities as if the Fund owned such reverse convertible securities directly. Therefore, the Bulletin would state that ETP Holders that carry customer accounts should follow the FINRA guidance set forth in the FINRA Regulatory Notice.

As disclosed in the Registration Statement, the Fund is designed for investors who seek to obtain income through selling options on select equity securities which the Index Provider determines to have the highest volatility. Because of the high volatility of the stocks underlying the options sold by the Fund, it is possible that the value of such stocks would decline in sufficient magnitude to trigger the exercise of the options and cause a loss which may outweigh the income from selling such options. The Registration Statement states that, accordingly, the Fund should be considered a speculative trading instrument and is not necessarily appropriate for investors who seek to avoid or minimize their exposure to stock market volatility. The Exchange's Information Bulletin regarding the Fund, described below, would provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in the Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Intraday Indicative Value would not be calculated or publicly disseminated; (4) how information regarding the Intraday Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin would reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin would also disclose that the NAV for the Shares would be calculated after 4:00 p.m. E.T. each trading day.

Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[30]

IV. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2012–108 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[31] to determine whether the proposed rule change, as modified by Amendment No. 1 thereto, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[32] the Commission is providing notice of the grounds for disapproval under consideration. In particular, Section 6(b)(5) of the Act[33] requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange's proposal would allow the Exchange to list and trade Shares of the Fund under NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units. The Fund would seek investment results that correspond generally to the performance, before the Fund's fees and

[29] The Exchange notes that NASD Rule 2310 relating to suitability, referenced in the FINRA Regulatory Notice, has been superseded by FINRA Rule 2111. *See* FINRA Regulatory Notice 12–25 (May 2012).

[30] *See* Notice and Registration Statement, *supra* notes 4 and 8, respectively.

[31] 15 U.S.C. 78s(b)(2)(B).

[32] *Id.*

[33] 15 U.S.C. 78f(b)(5).

expenses, of the Index. The Index does not meet the ''generic'' listing requirements of Commentary .01(a)(A) to NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of Investment Company Units based upon an index of US Component Stocks, because the Index consists of OTC down-and-in put options, written on 20 of the most volatile U.S. stocks that have market capitalization of at least $5 billion, as further described above. In accordance with its investment strategy, the Fund would sell OTC down-and-in put options in proportion to their weightings in the Index on economic terms which mirror those of the Index.

The Commission solicits comment on whether the proposal is consistent with the Exchange Act and whether the Exchange has sufficiently met its burden in presenting a statutory analysis of how its proposal is consistent with the Exchange Act. In particular, the grounds for disapproval under consideration include whether the Exchange's proposal is consistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,'' and ''to protect investors and the public interest.'' [34] First, the Commission continues to evaluate the potential impact of the discontinuous payoff structure of the OTC down-and-in put options that would be written by the Fund on the potential for manipulation of the securities underlying the options or the Shares. In addition, the Commission continues to evaluate the proposed disclosure regarding the strategy, risks and potential rewards, assumptions, and expected performance of the Fund, including the impact of the Fund's exposure through the writing of OTC down-and-in put options, which would have the effect of exposing the Fund to the return of reverse convertible securities. Furthermore, the Commission continues to evaluate the sufficiency of the transparency regarding the pricing of the OTC down-and-in put options, and the impact on the ability of investors to accurately price and hedge the Shares.

V. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[35]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 13, 2013. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 27, 2013.

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following:

1. What are commenters' views on whether investors would be able to understand the strategy, risks and potential rewards, assumptions and expected performance of the Fund, including the effect of the Fund's exposure to its down-and-in put options? With respect to the trading of the Fund's Shares on the Exchange, do commenters believe that the Exchange's rules governing sales practices *are adequately designed to ensure the suitability of recommendations regarding* the Fund's Shares? Why or why not? If not, should the Exchange's rules governing sales practices be enhanced? If so, in what way(s)? With respect to the trading of the Fund's Shares on the Exchange, do commenters believe that the proposed disclosure of the nature of, and the risks of investing in, the Shares is sufficient? Why or why not? If not, should the Exchange be required to enhance its disclosure relating to the Shares? If so, in what way(s) should the disclosure be enhanced?

2. The Fund states that the OTC down-and-in put options that it will write may experience greater discontinuity in pricing as they approach expiration, especially if the underlying equity price is close to the barrier level.[36] For example, in the example provided by the Exchange described above, where Stock ABC trades at $50 per share at the start of the 90-day period, and a down-and-in 90-day put option is written at an 80% barrier (resulting in a strike price of $50 per share and a barrier price of $40 per share), as the price of Stock ABC goes from $40 to $40.01, the value of the option goes from $10 to $0. Do commenters believe that this discontinuous payoff structure of down-and-in put options could give rise to the potential for manipulation? Does this type of barrier option have the potential to provide an incentive for someone who has a position in the option or the Fund to manipulate the price of the underlying stock when it is near the knock-in price on the expiration date? Why or why not?

3. Do commenters believe that the market for OTC down-and-in put options is sufficiently liquid and that pricing of those options is sufficiently transparent for investors in the Shares? Why or why not? Do commenters believe that investors would be able to accurately value such options? Why or why not?

4. Do commenters believe that the market for OTC down-and-in put options is sufficiently liquid and that pricing of those options is sufficiently transparent for authorized participants and market makers to effectively arbitrage the OTC market and the market for the Shares through the trading day? Why or why not?

5. The Commission understands that some market makers might use listed options to synthetically replicate down-and-in put options that may not be sufficiently liquid to buy and sell intraday. Do commenters believe the replication of down-and-in-put options through the purchase and sale of specific listed options would be an effective way for market makers to arbitrage the value of a down-and-in put option against the price of the Shares? Why or why not?

6. Are there other methods for authorized participants or market makers to hedge the market risk derived from arbitraging any differences between the market price of the Shares and the expected NAV per Share of the Fund?

[34] *Id.*

[35] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[36] *See* Registration Statement, *supra* note 8, at 3.

7. Do commenters believe that the ability of market makers and authorized participants to arbitrage throughout the day will be sufficiently robust to ensure that prices of the Shares closely track the intraday NAV per Share of the Fund? Are there circumstances in which significant premiums or discounts could develop?

8. Do commenters believe that the third-party model that would be used to value the Fund's OTC down-and-in put options would accurately reflect prices at which the Fund could enter into new OTC down-and-in put options or unwind existing OTC down-and-in put options? Why or why not? Should the Exchange or the Fund be required to provide further disclosure relating to the formula and methodology of such third-party pricing model? Would such disclosure better help investors to price the OTC down-and-in put options held by the Fund?

9. Are there any characteristics unique to barrier options on equity securities that would make them more difficult to value than options on equity securities without a barrier feature? If so, what are they and how could they potentially impact the valuation?

10. Are there any circumstances under which the nature of barrier options would cause market makers to widen bid and offer spreads for the Shares? For example, if a significant number of components stocks are at or near a 20% loss a few days before expiration of the down-and-out-put options, would market makers widen their spreads to reflect the added uncertainty?

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.* Please include File Number SR–NYSEArca–2012–108 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Numbers SR–NYSEArca–2012–108. 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 such filings 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–NYSE Arca–2012–108 and should be submitted on or before February 13, 2013. Rebuttal comments should be submitted by February 27, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01224 Filed 1–22–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68674; File No. SR– Phlx–2013–01]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Pricing Schedule

January 16, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2013, NASDAQ OMX 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 Substance of the Proposed Rule Change

The Exchange to amend the Exchange's Pricing Schedule at Section A, entitled ''Customer Rebate Program,'' Section I entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' [3] Section II entitled ''Multiply Listed Options Fees'' [4] and at Section IV entitled ''Other Transaction Fees.'' Specifically, the Exchange proposes to amend the Customer Rebate Program, Select Symbols,[5] Simple and Complex Order [6] fees and rebates, the applicability of Payment for Order Flow [7] and PIXL [8] Pricing.

The text of the proposed rule change is provided in *Exhibit 5.* The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.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

[37] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rebates and fees in Section I apply to certain Select Symbols which are listed in Section I of the Pricing Schedule.

[4] The pricing in Section II includes options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[5] The Select Symbols are listed in Section I of the Pricing Schedule.

[6] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or exchange-traded fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .08(a)(i).

[7] The Payment for Order Flow program started on July 1, 2005 as a pilot and after a series of orders extending the pilot became effective on April 29, 2012. *See* Securities Exchange Act Release No. 52114 (July 22, 2005), 70 FR 44138 (August 1, 2005) (SR–Phlx–2005–44); 57851 (May 22, 2008), 73 FR 31177 (May 20, 2008) (SR–Phlx–2008–38); 55891 (June 11, 2007), 72 FR 333271 (June 15, 2007) (SR–Phlx–2007–39); 53754 (May 3, 2006), 71 FR 27301 (May 10, 2006) (SR–Phlx–2006–25); 53078 (January 9, 2006), 71 FR 2289 (January 13, 2006) (SR–Phlx–2005–88); 52568 (October 6, 2005), 70 FR 60120 (October 14, 2005) (SR–Phlx–2005–58); and 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[8] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or (PIXL[SM]). *See* Rule 1080(n).