



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91210; File No. SR-NYSEArca-2021-14]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding the Listing and Trading Rule for Shares of the Alger 25 ETF**

February 25, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 22, 2021, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 update certain representations regarding the Alger 25 ETF (the “Fund”). The Securities and Exchange Commission (“Commission”) has approved listing and trading of shares of the Fund on the Exchange under NYSE Arca Rule 8.900-E (Managed Portfolio Shares).<sup>4</sup> Shares of the Fund have not commenced listing and trading on the Exchange. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.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**

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See note 5, *infra*.

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Fund under NYSE Arca Rule 8.900-E,<sup>5</sup> which governs the listing and trading of Managed Portfolio Shares on the Exchange.<sup>6</sup> The Shares of the Fund were to be issued by The Alger ETF Trust (the “Trust”), which is registered with the Commission as an open-end management investment company.<sup>7</sup> Shares of the Fund have not

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<sup>5</sup> See Securities Exchange Act Release No. 90528 (November 30, 2020), 85 FR 78389 (December 4, 2020) (SR-NYSEArca-2020-80) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of Alger Mid Cap 40 ETF and Alger 25 ETF under NYSE Arca Rule 8.900-E) (the “Prior Order”); see also Amendment No. 2 to SR-NYSEArca-2020-80, available at <https://www.sec.gov/comments/sr-nysearca-2020-80/srnysearca202080-7985015-225090.pdf> (the “Prior Filing”).

<sup>6</sup> NYSE Arca Rule 8.900-E provides that a Managed Portfolio Share is security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

<sup>7</sup> The Trust is registered under the Investment Company Act of 1940 (the “1940 Act”). On August 17, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act for the Alger Mid Cap 40 ETF and the Alger 25 ETF (File No. 811-23603). On February 19, 2021, the Trust filed an

commenced listing and trading on the Exchange.

The Exchange proposes to update two representations made in the Prior Filing and the Prior Order relating to the Fund. The Exchange proposes to (1) update the name of the Fund to the Alger 35 ETF and (2) update the number of holdings that the Fund will generally own to approximately 35, rather than approximately 25 as represented in the Prior Filing. The Prior Filing represented that the Fund's primary objective is to seek long-term capital appreciation and that the Fund will primarily invest in equity securities of growth companies of any market capitalization listed on U.S. exchanges, including common or preferred stocks, and these representations are unchanged with respect to the Alger 35 ETF. The Alger 35 ETF will differ from the Fund only in that it will generally own approximately 35 holdings, instead of approximately 25 holdings.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>8</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

This proposed rule change merely updates the name of the Fund and the approximate number of holdings that the Fund will own, in accordance with the Registration Statement.

Other than this proposed change, all statements in the Prior Filing remain unchanged,

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amended registration statement on Form N-1A under the 1933 Act and 1940 Act for the Alger Mid Cap 40 ETF and the Alger 35 ETF (File Nos. 811-23603 and 333-248085) (the "Registration Statement"). In response to the Trust's application for exemptive relief (File No. 812-15117), the Commission issued an order granting such relief to the Trust under the 1940 Act on May 19, 2020 (Investment Company Act Release No. 33869). The description of the operation of the Trust and the Alger 35 ETF, formerly known as the Alger 25 ETF, herein is based, in part, on the Registration Statement. The Exchange will not commence trading in shares of the Alger 35 ETF until the Registration Statement is effective.

<sup>8</sup> 15 U.S.C. 78f(b)(5).

including that the Alger 35 ETF will have the same investment objectives as the Fund and will invest in the same types of securities as the Fund. Accordingly, the Exchange believes that this proposed rule change raises no novel regulatory issues.

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 change does not introduce a new product, but rather proposes to update representations regarding the Fund that would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become

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<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing to accommodate the listing and trading of the Shares of the Alger 35 ETF on the Exchange prior to 30 days after the date of the filing. The Shares of the Fund have not yet commenced listing and trading, and the proposed changes to the rule governing their listing and trading raise no novel or regulatory issues. For these reasons, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and the Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.<sup>13</sup>

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.

#### 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-

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<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

2021-14 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-2021-14. This file number should be included on the subject line if e-mail 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-NYSEArca-2021-14 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Matthew DeLesDernier,**

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

*Assistant Secretary.*

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