

waitlist.¹⁹ Specifically, the initial and monthly charge for two bundles of 24 cross connects will be waived for a User that is waitlisted for a cage for the duration of the waitlist period, provided that the cross connects may only be used to connect the User's non-contiguous cabinets.²⁰ The charge will no longer be waived once a User is removed from the waitlist.²¹ In addition, a User that is removed from the waitlist but subsequently requests a cage will be added back to the bottom of the waitlist, provided that, if the User was removed from the waitlist because it turned down a cage that is the size that it requested, it will not receive a second waiver of the charge.²²

Visitor Security Escorts

The Exchange also proposes to amend its visitor security escort fee. Currently, a User visiting its cabinet(s) in the Data Center is required to pay a \$75/hour fee for a security escort.²³ The Exchange proposes to eliminate this fee for Users visiting their own cage in the Data Center,²⁴ and change the fee for those not visiting their own cage from \$75/hour to \$75/visit.²⁵ The Exchange states that a security escort is not needed when a User visits its own cage because that User would have access only to its own cabinets locked within its own cage,²⁶ and that User will not have access to the cabinets of other Users or Exchange equipment, which are locked as well.²⁷

III. Discussion and Commission Findings

After careful review and consideration of the Exchange's proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁸ In particular, the

Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(4) of the Act,²⁹ which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities, and with Section 6(b)(5) of the Act,³⁰ which requires, among other things, that the rules of a national securities exchange be designed 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.

The Commission believes that the proposed procedures for the allocation of cages to its co-located Users and associated waiver of fees subject to specified conditions are consistent with Sections 6(b)(4) and 6(b)(5) of the Act. In particular, the Commission believes that the proposed cage allocation and waitlist procedures are reasonably designed to assist the Exchange in offering cages to current and future Users in the Data Center on terms that are equitable and not unfairly discriminatory in the event that available open contiguous space in the Data Center is not sufficient to house a newly requested cage or sufficiently limited that the Exchange cannot both provide new cages and satisfy all User demand for other co-location services. The Commission further believes that the proposal to waive the initial and monthly fee for two bundles of 24 cross connects between a User's non-contiguous cabinets while a User is on the waitlist is consistent with the Act. Users can qualify for the fee waiver by requesting a cage and being placed on the waitlist until a cage becomes available to them. Once the Exchange offers the requested size cage to a User through the allocation procedure or when a User is removed from the waitlist, the fee would no longer be waived. In addition, if a User was removed from the waitlist because it turned down a cage that was the size that it requested, it would not receive a second waiver of the charge. The Commission believes that the proposed fee waiver and associated conditions are reasonably designed to alleviate the inconvenience for waitlisted Users of

having cabinets in non-contiguous spaces by removing the cost that those Users would otherwise avoid if a cage were available.

The Commission also finds the proposed amendments to the visitor security escort fee consistent with Sections 6(b)(4) and 6(b)(5) of the Act. The Exchange represents that a security escort is not needed when a User visits its own cage because that User would have access only to its own cabinets locked within its own cage,³¹ and will not have access to the cabinets of other Users or Exchange equipment, which are locked as well.³² In addition, the proposed rate of \$75/visit for the visitor security escort would be a fee reduction for any visit that lasted more than an hour, and so it would reduce the burden placed on Users that remain subject to the fee. Therefore, the Commission finds the proposed amendments to the visitor security escort fee to be reasonable, equitable, and not unfairly discriminatory.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change, as modified by Amendment No. 1, (File No. SR-NYSE-2016-13) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Brent J. Fields,

Secretary.

[FR Doc. 2016-09724 Filed 4-26-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32090; File No. 812-14587]

ABS Long/Short Strategies Fund and ABS Investment Management LLC; Notice of Application

April 21, 2016.

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

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption

¹⁹ See *id.*

²⁰ See *id.*

²¹ As noted above, a User that turns down a cage because it is not the correct size will remain on the waitlist. A User that requests to be removed or that turns down a cage that is the size that it requested will be removed from the waitlist. See *supra* note 17 and accompanying text.

²² See Notice, 81 FR at 13000.

²³ See *id.*

²⁴ See *id.* The Exchange is also making a technical change to the Price List visitor fee to add clarity. See *id.*

²⁵ See *id.* The Exchange stated that many of the escorted visits lasted an hour or less. See *id.*

²⁶ See *id.*

²⁷ See *id.*

²⁸ In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on

efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁹ 15 U.S.C. 78f(b)(4).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ See *supra* notes 26-27 and accompanying text.

³² See *id.*

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).

from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution fees and early withdrawal charges ("EWCs").

APPLICANTS: ABS Long/Short Strategies Fund (the "Fund") and ABS Investment Management LLC (the "Adviser").

FILING DATES: The application was filed on December 10, 2015 and amended April 1, 2016.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 17, 2016, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090; Applicants: ABS Long/Short Strategies Fund and ABS Investment Management LLC, c/o Edward C. Lawrence, Esq., Bernstein Shur, 100 Middle Street NW., Portland, ME 04104-5029.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 551-8811, or Daniele Marchesani, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

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

Applicants' Representations

1. The Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The

Fund's investment objective is to seek capital appreciation over a full market cycle while maintaining a lower level of volatility when compared to the global equity markets.

2. The Adviser is a Delaware limited liability company and is registered as an investment adviser under the Investment Advisers Act of 1940. The Adviser serves as investment adviser to the Fund.

3. The applicants seek an order to permit the Fund to issue multiple classes of shares, each having its own fee and expense structure, and to impose asset-based distribution fees and EWCs.

4. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company that may be organized in the future for which the Adviser or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser and which operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Fund, the "Funds").²

5. The Fund is currently making a continuous public offering of its common shares ("Founders' Shares"). Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange, nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Fund intends to continuously offer at least one additional class of shares ("Institutional Shares") and may also offer additional classes of shares in the future. Because of the different distribution fees, services and any other class expenses that may be attributable to a class of a Fund's shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Fund may create additional

classes of shares, the terms of which may differ from the Founders' Shares and Institutional Shares in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any EWC or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

8. Applicants state that the Fund may provide periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Exchange Act.³ A Future Fund may adopt a fundamental investment policy to repurchase a specified percentage of its shares in compliance with rule 23c-3 and make quarterly repurchase offers to its shareholders or provide periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Exchange Act. Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

9. Applicants represent that any asset-based service and distribution fees for each class of shares will comply with the provisions of NASD Rule 2830(d) ("NASD Sales Charge Rule").⁴ Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N-1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.⁵ In addition,

³ Applicants submit that rule 23c-3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933.

⁴ Any reference to the NASD Sales Charge Rule includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority ("FINRA").

⁵ See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004)

Continued

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.⁶

10. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

11. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees, and any other incremental expenses of that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

12. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each of the Funds will apply the EWC (and any waivers, scheduled variations, or eliminations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d-1 under the Act as if the Funds were open-end investment companies.

13. Each Fund operating as an interval fund pursuant to rule 23c-3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment

companies or (ii) other registered closed-end investment companies that comply with rule 23c-3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, "Other Funds"). Shares of a Fund operating pursuant to rule 23c-3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c-3 under the Act. Any exchange option will comply with rule 11a-3 under the Act, as if the Fund were an open-end investment company subject to rule 11a-3. In complying with rule 11a-3, each Fund will treat an EWC as if it were a contingent deferred sales load ("CDSL").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent 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 request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will

not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c-3 under the Act permits a registered closed-end investment company (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c-3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c-10

(adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

⁶ Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1-1, *et seq.* of the Act.

under the Act. Rule 6c-10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c-10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSLs.

Asset-Based Distribution Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to the extent necessary to permit the Funds to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

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

Each Fund relying on the order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the NASD Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

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

Brent J. Fields,

Secretary.

[FR Doc. 2016-09715 Filed 4-26-16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77674; File No. SR-NYSE-2016-22]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting Initial and Continued Listing Standards for the Listing of Equity Investment Tracking Stocks and Adopting Listing Fees Specific to Equity Investment Tracking Stocks

April 21, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on April 7, 2016, New York Stock Exchange LLC ("NYSE" 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 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 adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks. The Exchange also proposes to adopt listing fees specific to Equity Investment Tracking Stocks. The proposed rule change is available on the Exchange's Web site at 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

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 Exchange proposes to adopt initial and continued listing standards for the listing of Equity Investment Tracking Stocks. The Exchange also proposes to adopt listing fees specific to Equity Investment Tracking Stocks.

For purposes of proposed new Section 102.07 of the Manual, an Equity Investment Tracking Stock refers to a class of common stock that is the listed company's sole class of common equity securities listed on the Exchange and that is designed solely to track the performance of an investment by the issuer in the common stock of another company listed on the Exchange.

In order to qualify for initial listing under proposed Section 102.07, an Equity Investment Tracking Stock will be required to meet the distribution and public float requirements currently applicable for initial public offerings set forth in Sections 102.01A and 102.01B

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.