

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

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 32318; File No. 812-14594]

First Investors Equity Funds, et al.; Notice of Application

October 14, 2016.

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

ACTION: Notice of an application for an order pursuant to: (a) Section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d-1 under the Act to permit certain joint arrangements and transactions. Applicants request an order that would permit certain registered open-end management investment companies to participate in a joint lending and borrowing facility.

APPLICANTS: First Investors Equity Funds, First Investors Income Funds, First Investors Life Series Funds and First Investors Tax Exempt Funds (each a "Trust"), each a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series and Foresters Investment Management Company, Inc. (the "Adviser"), a New York corporation registered as an investment adviser under the Investment Advisers Act of 1940.

DATES: *Filing Dates:* The application was filed on December 23, 2015 and amended on May 20, 2016 and September 16, 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

November 8, 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: Mary Carty, Esq., Foresters Investment Management Company, Inc., 40 Wall Street, New York, NY 10005.

FOR FURTHER INFORMATION CONTACT: Kay-Mario Vobis, Senior Counsel, at (202) 551-6728 or Mary Kay Frech, Branch Chief, at (202) 551-6821 (Division of Investment Management, Chief Counsel's Office).

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

Summary of the Application

1. Applicants request an order that would permit the applicants to participate in an interfund lending facility where each Fund could lend money directly to and borrow money directly from other Funds to cover unanticipated cash shortfalls, such as unanticipated redemptions or trade fails.¹ The Funds will not borrow under the facility for leverage purposes and the loans' duration will be no more than 7 days.²

2. Applicants anticipate that the proposed facility would provide a borrowing Fund with a source of liquidity at a rate lower than the bank borrowing rate at times when the cash position of the Fund is insufficient to

¹ Applicants request that the order apply to the applicants and to any existing or future registered open-end management investment company or series thereof for which the Adviser or any successor thereto or an investment adviser controlling, controlled by, or under common control with the Adviser or any successor thereto serves as investment adviser (each a "Fund" and collectively the "Funds" and each such investment adviser an "Adviser"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of a business organization.

² Any Fund, however, will be able to call a loan on one business day's notice.

meet temporary cash requirements. In addition, Funds making short-term cash loans directly to other Funds would earn interest at a rate higher than they otherwise could obtain from investing their cash in repurchase agreements or certain other short term money market instruments. Thus, applicants assert that the facility would benefit both borrowing and lending Funds.

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Among others, the Adviser, through a designated committee, would administer the facility as a disinterested fiduciary as part of its duties under the investment management agreements with the Funds and would receive no additional fee as compensation for its services in connection with the administration of the facility. The facility would be subject to oversight and certain approvals by the Funds' Board, including, among others, approval of the interest rate formula and of the method for allocating loans across Funds, as well as review of the process in place to evaluate the liquidity implications for the Funds. A Fund's aggregate outstanding interfund loans will not exceed 15% of its net assets, and the Fund's loans to any one Fund will not exceed 5% of the lending Fund's net assets.³

4. Applicants assert that the facility does not raise the concerns underlying section 12(d)(1) of the Act given that the Funds are part of the same group of investment companies and there will be no duplicative costs or fees to the Funds.⁴ Applicants also assert that the proposed transactions do not raise the concerns underlying sections 17(a)(1), 17(a)(3), 17(d) and 21(b) of the Act as the Funds would not engage in lending transactions that unfairly benefit insiders or are detrimental to the Funds. Applicants state that the facility will offer both reduced borrowing costs and enhanced returns on loaned funds to all participating Funds and each Fund would have an equal opportunity to borrow and lend on equal terms based on an interest rate formula that is objective and verifiable. With respect to the relief from section 17(a)(2) of the Act, applicants note that any collateral pledged to secure an interfund loan would be subject to the same conditions imposed by any other lender to a Fund

³ Under certain circumstances, a borrowing Fund will be required to pledge collateral to secure the loan.

⁴ Applicants state that the obligation to repay an interfund loan could be deemed to constitute a security for the purposes of sections 17(a)(1) and 12(d)(1) of the Act.

³⁴ 17 CFR 200.30-3(a)(57) and (58).

that imposes conditions on the quality of or access to collateral for a borrowing (if the lender is another Fund) or the same or better conditions (in any other circumstance).⁵

5. Applicants also believe that the limited relief from section 18(f)(1) of the Act that is necessary to implement the facility (because the lending Funds are not banks) is appropriate in light of the conditions and safeguards described in the application and because the Funds would remain subject to the requirement of section 18(f)(1) that all borrowings of a Fund, including combined interfund loans and bank borrowings, have at least 300% asset coverage.

6. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 12(d)(1)(J) 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 section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (a) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policies of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act. Rule 17d-1(b) under the Act provides that in passing upon an application filed under the rule, the Commission will consider whether the participation of the registered investment company in a joint enterprise, joint arrangement or profit sharing plan on the basis proposed is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of the other participants.

⁵ Applicants state that any pledge of securities to secure an interfund loan could constitute a purchase of securities for purposes of section 17(a)(2) of the Act.

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

Brent J. Fields,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79101; File No. SR-NYSEArca-2016-131]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Virtus Enhanced U.S. Equity ETF Under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3)

October 14, 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 October 3, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 list and trade the shares of the Virtus Enhanced U.S. Equity ETF (the “Fund”), a series of Virtus ETF Trust II (the “Trust”), under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3) (“Investment Company Units”). 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 list and trade shares (“Shares”) of the Virtus Enhanced U.S. Equity ETF (“Fund”) under Commentary .01 to NYSE Arca Equities Rule 5.2(j)(3), which governs the listing and trading of Investment Company Units on the Exchange.⁴ The Fund will be an index-based exchange traded fund (“ETF”). The Shares will be offered by the Virtus ETF Trust II (the “Trust”), which is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (the “Registration Statement”) with the Commission on behalf of the Fund.⁵

The investment adviser to the Fund will be Virtus ETF Advisers LLC (the “Adviser”). ETF Distributors LLC will serve as the distributor (the “Distributor”) of Fund shares on an agency basis. The Bank of New York Mellon (the “Administrator”) will be the administrator, custodian and transfer agent for the Fund.⁶

Description of the Shares and the Fund

As discussed in more detail below, the Fund’s investment objective is to seek investment results that, before fees and expenses, closely correspond to the price and yield performance of the Rampart Enhanced U.S. Equity Index (the “Index”). The Index was developed by Rampart Investment Management Company, LLC (the “Index Provider”), and the Index is calculated and

⁴ NYSE Arca Equities Rule 5.2(j)(3)(A) provides that an Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities).

⁵ See the Trust’s registration statement on Form N-1A, dated September 1, 2016 (File Nos. 333-206600 and 811-23078). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

⁶ The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). See Investment Company Act Release No. 30825 (December 11, 2013) (File No. 812-14212) (“Exemptive Order”). Investments made by the Fund will comply with the conditions in the Exemptive Order.