12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Fund of Funds in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of Beneficial Owners.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by a Fund of Funds in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in the Shares of a Fund in excess of the limits in section 12(d)(1)(A), a Fund of Funds will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers or trustee and Sponsor, as applicable, understand the terms and conditions of the Order, and agree to fulfill their responsibilities under the Order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), a Fund of Funds will notify the Fund of the investment. At such time, the Fund of Funds will also transmit to the Fund a list of the names of each Fund of Funds Affiliate and Underwriting Affiliate. The Fund of Funds will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Fund of Funds will maintain and preserve a copy of the Order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of a Fund of Funds will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of an investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

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

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30893 Filed 12–21–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTERCITATION OF PREVIOUS ANNOUNCEMENT: [77 FR 74894, December 18, 2012].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, December 20, 2012 at 2:00 p.m.

CHANGE IN THE MEETING: Time Change.

The Closed Meeting scheduled for Thursday, December 20, 2012 at 2:00 p.m. was changed to Thursday, December 20, 2012 at 9:00 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: December 20, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–31030 Filed 12–20–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68459; File No. TP 13–02]

Order Granting Limited Exemptions From Exchange Act Rule 10b–17 and Rules 101 and 102 of Regulation M to ALPS ETF Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia ex-Japan Equities and U.S. Treasuries Index ETF Pursuant to Exchange Act Rule 10b–17(b)(2) and Rules 101(d) and 102(e) of Regulation M

December 18, 2012.

By letter dated December 18, 2012 (the ''Letter''), as supplemented by conversations with the staff of the Division of Trading and Markets, counsel for ALPS ETF Trust (the ''Trust'') on behalf of the Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia ex-Japan Equities and U.S. Treasuries Index ETF (each a ''Fund'' and, collectively, the ''Funds''), any national securities exchange on or through which shares issued by the Funds (''Shares'') may subsequently trade, and persons or entities engaging in transactions in Shares (collectively, the ''Requestors'') requested exemptions, or interpretive or no-action relief, from Rule 10b–17 of the Securities Exchange Act of 1934, as amended (''Exchange Act'') and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of aggregations of Shares of at least 50,000 shares (''Creation Units'').

The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (''1940 Act'') as an open-end management investment company. Each Fund seeks to track the performance of a particular underlying index (''Index''), which for each Fund is comprised of shares of exchange traded products (''ETPs'') (primarily exchange-traded funds, or ''ETFs,'' but also some exchange-traded commodity pools). Using a methodology developed by the index provider, each Index seeks to provide exposure to price momentum of certain equity markets and U.S. fixed income markets by reflecting the combination of weightings of the ETPs that underlie each Index that would have provided the highest six-month historical return, subject to constraints on maximum and minimum weights and volatility controls.[1] The Index is rebalanced monthly, but may also be rebalanced as frequently as daily if the daily volatility control is triggered.[2] Each Fund intends to operate as an ''ETF of ETFs'' by seeking to track the performance of its underlying Index in investing at least 80% of its assets in the ETPs that comprise each Index. Except for the fact that the Funds will operate as ETFs of ETFs, the Funds will operate in a manner identical to the ETPs that comprise each Index.

The Requestors represent, among other things, the following:

- Shares of the Funds will be issued by the Trust, an open-end management investment company that is registered with the Commission;
- The Trust will continuously redeem Creation Units at net asset value (''NAV'') and the secondary market price of the Shares should not vary substantially from the NAV of such Shares;
- Shares of the Funds will be listed and traded on the NYSE Arca (the ''Exchange'') or other exchange in accordance with exchange listing standards that are, or will become, effective pursuant to Section 19(b) of the Exchange Act;
- All ETPs in which the Funds are invested will meet all conditions set forth in a relevant class relief letter,[3] or will have received individual relief from the Commission;[4]
- At least 70% of each Fund is comprised of component securities that meet the minimum public float and minimum average daily trading volume thresholds under the ''actively-traded securities'' definition found in Regulation M for excepted securities during each of the previous two months of trading prior to formation of the relevant Fund; provided, however, that if the Fund has 200 or more component securities, then 50% of the component securities must meet the actively-traded securities thresholds;
- All the components of each Index will have publicly available last sale trade information;
- The intra-day proxy value of each Fund per share and the value of each Index will be publicly disseminated by a major market data vendor throughout the trading day;
- On each business day before the opening of business on the Exchange, the Funds' custodian, through the National Securities Clearing Corporation, will make available the list of the names and the numbers of securities and other assets of each Fund's portfolio that will be applicable that day to creation and redemption requests;
- The Exchange or other market information provider will disseminate every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association an amount representing on a per-share basis, the current value of the securities and cash to be deposited as consideration for the purchase of Creation Units;
- The arbitrage mechanism will be facilitated by the transparency of the Funds' portfolio and the availability of the intra-day indicative value, the liquidity of securities and other assets held by the Funds, ability to acquire such securities, as well as the arbitrageurs' ability to create workable hedges;
- The Funds will invest solely in liquid securities;
- The Funds will invest in securities that will facilitate an effective and efficient arbitrage mechanism and the ability to create workable hedges;
- The Requestors believe that arbitrageurs are expected to take advantage of price variations between each Fund's market price and its NAV; and
- A close alignment between the market price of Shares and each Fund's NAV is expected.

Regulation M

While redeemable securities issued by an open-end management investment company are excepted from the provisions of Rule 101 and 102 of Regulation M, the Requestors may not rely upon that exception for the Shares.[5] However, we find that it is appropriate in the public interest and is consistent with the protection of investors to grant a conditional exception from Rules 101 and 102 to persons who may be deemed to be participating in a distribution of Shares and the Funds as described in more detail below.

Rule 101 of Regulation M

Generally, Rule 101 of Regulation M is an anti-manipulation rule that, subject to certain exceptions, prohibits any ''distribution participant'' and its ''affiliated purchasers'' from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in the rule. Rule 100 of

[1] Two levels of volatility control are applied. The monthly volatility control is performed on each monthly rebalancing date and sets a maximum limit on the annualized historic six-month ''realized'' volatility of any selected combination of ETF weights. Each Index is then rebalanced at that time to reflect such limit. The daily volatility control rebalances a portion or all of the current Index components into short-term fixed income ETFs in order to reduce volatility when the annualized historic three-month volatility of the current Index components exceeds a predetermined level. Following any rebalance resulting from the Index components' volatility exceeding such level, each Index is rebalanced into its prior composition when the annualized historic three-month volatility of such composition declines below the predetermined level.

[2] The Requestors represented to the staff of the Division of Trading and Markets that, with regards to these volatility controls, (1) if they trigger a rebalance, the rebalance will be posted three days in advance to the relevant Web site by the calculation agent and (2) based on historical backtesting performed by the Index Provider, the daily volatility control would only have been triggered in the past under rare circumstances.

[3] Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee (November 21, 2005); Letter from Racquel L. Russell, Branch Chief, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP (June 21, 2006); Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (October 24, 2006); Letter from James A. Brigagliano, Associate Director, Division of Market Regulation, to Benjamin Haskin, Esq., Willkie, Farr & Gallagher LLP (April 9, 2007); or Letter from Josephine Tao, Associate Director, Division of Trading and Markets, to Domenick Pugliese, Esq., Paul, Hastings, Janofsky and Walker LLP (June 27, 2007).

[4] One Underlying ETF is an actively-managed ETF and has received individual relief, but also is entitled to rely in part on a prior letter from Josephine Tao, Associate Director, Division of Trading and Markets, to Richard F. Morris of WisdomTree Asset Management, Inc., dated May 9, 2008, with respect to relief regarding Section 11(d)(1) of the Exchange Act and Rules 10b–10, 11d1–2, 15c1–5, and 15c1–6 under the Exchange Act.

[5] While ETFs operate under exemptions from the definitions of ''open-end company'' under Section 5(a)(1) of the 1940 Act and ''redeemable security'' under Section 2(a)(32) of the 1940 Act, the Funds and their securities do not meet those definitions.

Regulation M defines ''distribution'' to mean any offering of securities that is distinguished from ordinary trading transactions by the magnitude of the offering and the presence of special selling efforts and selling methods. The provisions of Rule 101 of Regulation M apply to underwriters, prospective underwriters, brokers, dealers, or other persons who have agreed to participate or are participating in a distribution of securities. The Shares are in a continuous distribution and, as such, the restricted period in which distribution participants and their affiliated purchasers are prohibited from bidding for, purchasing, or attempting to induce others to bid for or purchase extends indefinitely.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will continuously redeem at the NAV Creation Unit size aggregations of the Shares of the Funds and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (d) of Rule 101 of Regulation M with respect to the Funds, thus permitting persons participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.[6]

Rule 102 of Regulation M

Rule 102 of Regulation M prohibits issuers, selling security holders, or any affiliated purchaser of such person from bidding for, purchasing, or attempting to induce any person to bid for or purchase a covered security during the applicable restricted period in connection with a distribution of securities effected by or on behalf of an issuer or selling security holder.

Based on the representations and facts presented in the Letter, particularly that the Trust is a registered open-end management investment company that will redeem at the NAV Creation Units of Shares of the Funds and that a close alignment between the market price of Shares and each Fund's NAV is expected, the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to grant the Trust an exemption under paragraph (e) of Rule 102 of Regulation M with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

Rule 10b–17

Rule 10b–17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b–17(b). Based on the representations and facts in the Letter, and subject to the conditions below, we find that it is appropriate in the public interest, and consistent with the protection of investors to grant the Trust a conditional exemption from Rule 10b–17 because market participants will receive timely notification of the existence and timing of a pending distribution, and thus the concerns that the Commission raised in adopting Rule 10b–17 will not be implicated.[7]

Conclusion

It is hereby ordered, pursuant to Rule 101(d) of Regulation M, that the Trust, based on the representations and facts presented in the Letter is exempt from the requirements of Rule 101 with respect to the Funds, thus permitting persons who may be deemed to be participating in a distribution of Shares of the Funds to bid for or purchase such Shares during their participation in such distribution.

It is further ordered, pursuant to Rule 102(e) of Regulation M, that the Trust, based on the representations and the facts presented in the Letter, is exempt from the requirements of Rule 102 with respect to the Funds, thus permitting the Funds to redeem Shares of the Funds during the continuous offering of such Shares.

It is further ordered, pursuant to Rule 10b–17(b)(2), that the Trust, based on the representations and the facts presented in the Letter and subject to the conditions below, is exempt from the requirements of Rule 10b–17 with respect to transactions in the shares of the Funds.

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b–17 except for Rule 10b–17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b–17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. Persons relying upon this exemption shall discontinue transactions involving the Shares of the Funds under the circumstances described above and in the Letter, pending presentation of the facts for the Commission's consideration, in the event that any material change occurs with respect to any of the facts or representations made by the Requestors. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b–5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemption. This order should not be considered a view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30889 Filed 12–21–12; 8:45 am]

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[6] Additionally, we confirm the interpretation that a redemption of Creation Unit size aggregations of Shares of the Fund and the receipt of securities in exchange by a participant in a distribution of Shares of the Fund would not constitute an ''attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' within the meaning of Rule 101 of Regulation M and therefore would not violate that rule.

[7] We also note that timely compliance with Rule 10b–17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Fund. This is because it is not possible for the Fund to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

[8] 17 CFR 200.30–3(a)(6) and (9).