deemed acceptable to mitigate one-sided order flow driven by index option expiration. Nasdaq now has an automated closing cross that that facilitates orderly closings by aggregating a large pool of liquidity, across a variety of order types, in a single venue. The Exchange believes that Nasdaq's closing procedures are well-equipped to mitigate imbalance pressure at the close. Furthermore, the Exchange believes that the proposal is designed to mitigate any potential concerns regarding P.M. settlement. Specifically, the Exchange believes that the proposal will provide additional trading and hedging opportunities for investors.

XND options will be subject to the same rules that presently govern the trading of index options based on the Nasdaq-100 Index, including sales practice rules, margin requirements, trading rules, and position and exercise limits. The Exchange therefore believes that the rules applicable to trading in XND options are consistent with the protection of investors and the public interest. Furthermore, the Exchange represents that it has sufficient systems capacity and adequate surveillance procedures to handle trading in XND options.

With respect to the Exchange's proposal to adopt new Supplementary Material .03 to Options 3, Section 3 to provide that minimum increments for bids and offers for XND options be the same as those for QQQ, regardless of the value at which the option series is quoted, may promote competition and benefit investors. This proposal aligns the minimum increments for XND options with those for QQQ options in order to allow market participants to quote in minimum increments of $0.01 is consistent with the Act because allowing participants to quote in smaller increments may provide the opportunity for reduced spreads, thereby lowering costs to investors. In addition, because both XND and QQQ are based on Nasdaq-100 Index it would be reasonable for the minimum increments of bids and offers to be the same for both types of options.

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 purposes of the Act. XND options would be available for trading to all market participants. The proposed rule change will facilitate the listing and trading of a new option product that will enhance competition among market participants, to the benefit of investors and the marketplace. The listing of XND will enhance competition by providing investors with an additional investment vehicle, in a fully-electronic trading environment, through which investors can gain and hedge exposure to the Nasdaq-100 Index. Furthermore, this product could offer a competitive alternative to other existing investment products that seek to allow investors to gain broad market exposure. Finally, it is possible for other exchanges to develop or license the use of a new or different index to compete with the Nasdaq-100 Index and seek Commission approval to list and trade options on such an index.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

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 email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2021–07 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–Phlx–2021–07. 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 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–Phlx–2021–07, and should be submitted on or before March 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–03949 Filed 2–25–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–34199]

Commission Statement on Insurance Product Fund Substitution Applications

February 23, 2021.

AGENCY: Securities and Exchange Commission.

ACTION: Commission statement.

The Commission is issuing a statement regarding applications for orders approving the substitution of certain securities pursuant to section 26(c) of the Investment Company Act of 1940, as amended, (the ''Act'') (and

[30] 17 CFR 200.30–3(a)(12).

related orders of exemption pursuant to section 17(b) of the Act from section 17(a) of the Act). The statement sets forth the Commission's position that the substitution by an insurance company of registered open-end investment companies used as investment options for variable life insurance policies or variable annuity contracts will not provide a basis for enforcement action under section 26(c) of the Act (and section 17(a) of the Act for in-kind substitutions) if the insurance company does not obtain an order under section 26(c) (and section 17(b)) so long as the terms and conditions of the proposed substitution are substantially similar to those approved by a prior order for a substitution under section 26(c) (and section 17(b)) obtained by the insurance company since January 1, 2004.

DATES: The Commission's statement is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, David J. Marcinkus, Branch Chief, Nadya B. Roytblat, Assistant Chief Counsel, or Daniele Marchesani, Assistant Chief Counsel, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Variable insurance contracts (variable annuities and variable life insurance policies) are issued by insurance companies and typically have a two-tier structure. The top tier is a separate account of the insurance company, registered under the Act as a unit investment trust (''UIT''). The separate account, in turn, has subaccounts that invest in numerous (sometimes hundreds of) underlying mutual funds (open-end investment companies registered under the Act) and exchange-traded funds (collectively, ''Investment Options''). Contract holders typically allocate their assets across these various Investment Options available through the separate account. Under the contracts, the insurance company typically reserves the right, subject to compliance with applicable laws, to substitute Investment Options with other Investment Options after appropriate notice. The contracts also typically permit the insurance company to limit the manner in which a contract owner may allocate purchase payments to the subaccounts that invest in an Investment Option.[1] Insurance companies have offered separate account UITs with numerous Investment Options with the expectation and understanding that they would have the ability to make changes among the Investment Options in appropriate circumstances.

Section 26(c) of the Act prohibits a depositor or trustee of a UIT that invests in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission.[2] Section 26(c) provides that such approval shall be granted by order of the Commission if the evidence establishes that the substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Congress' concern underlying section 26(c) related to the lack of recourse and potentially additional fees experienced by investors in a single-security UIT in the case of a substitution.[3] Legislative history suggests that when Congress enacted the substitution order requirement in section 26(c) in 1970, it intended to limit the requirement to those UITs whose investors' economic exposure was limited to the single underlying security being substituted.[4]

In the past four decades, nearly 200 substitution applications under section 26(c) by insurance companies sponsoring variable annuity and variable life insurance products that offer multiple Investment Options have been approved by the Commission.[5] In so doing, the Commission has come to require terms and conditions that focus on key investor protections designed to address the concerns expressed in the legislative history of Section 26(c). These conditions include, among others, disclosure notifying affected contract owners at least 30 days in advance of the substitution; a requirement that each substitute fund have substantially similar investment objectives, principal investment strategies, and principal risks to the fund it is replacing; and a cap on total operating expenses of the substitute fund, such that they will not exceed those of the fund it is replacing for at least two years. The terms and conditions of substitution applications approved by the Commission under section 26(c) have been substantially similar to one another for at least the past 17 years.[6]

[1] In addition to registering with the Commission as an investment company under the Act, each separate account registers its securities under the Securities Act of 1933. In doing so, each separate account files a registration statement with the Commission that includes a prospectus describing the Contracts offered by the separate account and a copy of the form of such contracts.

[2] Section 26(c) states: ''It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.'' 15 U.S.C. 80a–26(c).

[3] In amending section 26 to require Commission approval of substitutions, Congress stated: ''The proposed amendment recognizes that in the case of the unit investment trust holding the securities of a single issuer notification to shareholders does not provide adequate protection since the only relief available to shareholders, if dissatisfied, would be to redeem their shares. A shareholder who redeems and reinvests the proceeds in another unit investment trust or in an open-end company would under most circumstances be subject to a new sales load. The proposed amendment would close this gap in shareholder protection by providing for [Commission] approval of the substitution. The [Commission] would be required to issue an order approving the substitution if it finds the substitution consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.'' S. Rep. No. 184, 91st Cong., 1st Sess. 41 (1969), reprinted in 1970 U.S.C.C.A.N. 4897, 4936 (''Senate Report'').

[4] In 1966, the Commission recommended requiring Commission approval for any proposed substitution, regardless of the number of underlying issuers. *See* Report of the Securities and Exchange Commission on the Public Policy Implications of Investment Company Growth, H.R. Rep. No. 2337, 89th Cong. 2d Sess. 337 (1966) (stating ''the Commission recommends that section 26 be amended to require that proposed substitutions may not occur without Commission approval''). Congress, however, amended section 26 with reference to single-security UITs only. At the time Congress enacted section 26(c), most UITs invested all of their assets in a single security and issued ''periodic payment plan certificates,'' which in return for fixed monthly payments over a period of years provided the purchaser with an interest in, but not direct ownership of, an underlying investment company's shares. These single-security UITs ''serve[d] merely as a mechanism for buying investment company shares on an installment payment basis.'' *Id.* at 38. Although UITs holding a variety of securities were popular in the early 1930s, by the time section 26(c) was enacted, their importance had dwindled. Both types of UITs seldom made changes to their underlying securities and were viewed as fixed portfolios. *See id.* at 38. In 1982, in response to a commenter, the Commission stated in a release that it had determined not to reexamine at that time its position that section 26(c) of the Act requires Commission approval for a substitution of securities in any subaccount of a registered separate account. *See* Inv. Co. Act Rel. No. 12678 (Sep. 21, 1982) at 5.

[5] A number of such orders also included relief pursuant to section 17(b) of the Act from section 17(a)(1) and (2) of the Act to the extent necessary to permit the substitutions to be carried out by redeeming shares issued by each target fund in-kind and using the securities distributed as redemption proceeds to purchase shares issued by the applicable destination funds, at the respective net asset values of the funds. Section 17(a)(1) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, knowingly from selling any security or other property to such registered investment company. Section 17(a)(2) of the Act, in relevant part, prohibits any affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, knowingly from purchasing any security or other property from such registered investment company. ''Affiliated person'' is defined in section 2(a)(3) of the Act.

[6] Pursuant to the Congressional Review Act, the Office of Information and Regulatory Affairs has

Commission Statement

Based on the Commission's administrative experience with substitution orders, we are stating our position that the substitution by an insurance company of registered open-end investment companies used as Investment Options for variable life insurance policies or variable annuity contracts will not provide a basis for an enforcement action if the insurance company does not obtain an order from the Commission under section 26(c) (and section 17(b) for certain substitutions) so long as the terms and conditions of the proposed substitution are substantially similar to those approved by a prior order for a substitution pursuant to section 26(c) obtained by the insurance company since January 1, 2004.[7]

When making the sort of substitution discussed in this Commission statement, the insurance company should submit correspondence accompanying its disclosure of the upcoming substitution made via a prospectus supplement filed with the Commission pursuant to Rule 497 under the 1933 Act. Such correspondence should: (1) Indicate that the substitution is of the type discussed in this Commission statement; (2) identify the prior order with terms and conditions substantially similar to those in the substitution; (3) confirm that the substitution is consistent with the terms and conditions of the identified prior order; and (4) explain why each existing fund and corresponding replacement fund are substantially similar, including a comparison of the investment objectives, strategies and risks of each existing fund and its corresponding replacement fund.

Any insurance company that has not obtained an order under section 26(c) for a substitution since January 1, 2004 will need to apply for one, and any insurance company that prefers to receive such an order is able to continue to apply for one.[8] We believe that this approach would continue to preserve the investor protections that have been afforded as part of the review of substitutions under section 26(c), while allowing for a more efficient process of substitutions in the variable insurance products context. We also believe that this approach would lessen the regulatory burden associated with insurance company substitutions, while remaining consistent with previous Substitution Orders that were designed to address the concerns reflected in the legislative history of section 26(c) of the Act.

By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–03989 Filed 2–25–21; 8:45 am]

BILLING CODE 8011–01–P

designated this policy statement as not a ''major rule,'' as defined by 5 U.S.C. 804(2). See 5 U.S.C. 801 *et seq.*

[7] Our position also extends to any related relief under section 17(b) of the Act from section 17(a) that the insurance company might have received to conduct the substitutions in-kind.

[8] An insurance company that has not obtained such an order since January 1, 2004, but may have acquired another insurance company that did, may not rely on the acquiree's order under the Commission's position; an insurance company that had obtained such an order and also may have acquired another insurance company that also had obtained such an order, must look exclusively to the terms and conditions of the acquiror's order for purposes of the Commission's position.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34198; 812–15205]

Infinity Q Diversified Alpha Fund, a Series of Trust for Advised Portfolios, and Infinity Q Capital Management, LLC; Notice of Application and Temporary Order

February 22, 2021.

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

ACTION: Notice of application and a temporary order under Section 22(e)(3) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicants request a temporary order to permit Infinity Q Diversified Alpha Fund (the ''Fund''), a series of Trust for Advised Portfolios (the ''Trust''), to suspend the right of redemption of its outstanding redeemable securities.

APPLICANTS: The Trust, on behalf of the Fund, and Infinity Q Capital Management LLC, the Fund's investment adviser (''Infinity Q'' and together with the Trust, the ''Applicants'').

FILING DATE: The application was filed on February 22, 2021.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing by writing to the Commission's Secretary at *Secretarys-Office@sec.gov* 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 March 19, 2021, and should be accompanied by proof of service on 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, *Secretarys-Office@sec.gov.* Applicants: Trust, on behalf of the Fund, c/o U.S. Bank Global Fund Services, P.O. Box 701, Milwaukee, Wisconsin 53201–0701, with copies to Christopher D. Menconi, Esq., Ivan P. Harris, Esq., Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004; Infinity Q, 888 Seventh Avenue, Suite 3700, New York, NY 10106, with copies to Alexander J. Willscher, Esq., Frederick Wertheim, Esq., Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004.

FOR FURTHER INFORMATION CONTACT: Daniel T. Gallagher, Attorney-Adviser, Jennifer L. Sawin, Senior Counsel, or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The complete application may be obtained via the Commission's website 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.

Background

1. The Trust is registered under the Act as an open-end series management investment company. Infinity Q is the investment adviser to the Fund, a series of the Trust. Infinity Q is registered as an investment adviser under the Investment Advisers Act of 1940. Infinity Q valued its assets under management as of January 31, 2021, at approximately $3.0 billion, of which approximately $1.8 billion was attributable to the Fund. The Fund is a ''commodity pool'' under the U.S. Commodity Exchange Act, and Infinity Q is a ''commodity pool operator'' registered with and regulated by the Commodity Futures Trading Commission.

2. Applicants state that the request for relief arises from Infinity Q's inability, as required under the Fund's valuation procedures, to value certain Fund holdings and the Fund's resulting inability to calculate net asset value (''NAV''). According to Applicants, the Fund's current portfolio includes swap instruments (the ''Swaps'') for which