

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76161; File No. SR-NYSEArca-2015-88)

October 15, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Representations Regarding the Names and Principal Investments of Certain WBI SMID Funds Currently Listed and Traded on the Exchange under NYSE Arca Equities Rule 8.600

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 September 30, 2015, NYSE Arca, Inc.

(“Exchange” or “NYSE Arca”) 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 change representations regarding the names and principal investments of each of the following: WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; and WBI Large Cap Tactical Select Share (each a “Fund and, collectively, the “Funds”). Shares of the Funds have been approved for listing and trading on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Exchange's website 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 Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares ("Shares") of the Funds under NYSE Arca Equities Rule 8.600⁴, which governs the listing and trading of Managed Fund Shares.⁵ The Funds' Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

⁴ See Securities Exchange Act Release No. 72895 (August 21, 2014), 79 FR 51210 (August 27, 2014) (SR-NYSEArca-2014-67) (the "Prior Order"). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 72526 (July 2, 2014), 79 FR 39035 (July 9, 2014) ("Prior Notice" and, together with the Prior Order, the "Prior Release").

⁵ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

The Shares are offered by Absolute Shares Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁶ The investment adviser to the Fund is Millington Securities, Inc. (the “Adviser”) and WBI Investments, Inc. is each Fund’s sub-adviser (“Sub-Adviser”).

Common Fund Strategy and Characteristics

The principal investment objective of each Fund is to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions. As described in the Prior Release, the Sub-Adviser manages each Fund’s portfolio based on a proprietary selection process as described in the Prior Release (the “Selection Process”). The Selection Process attempts to provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be. Each Fund defines an absolute return approach to investment management in this way. The Selection Process includes a buy discipline and a sell discipline as described in the Prior Release. In this proposed rule change, the Exchange proposes (1) to reflect changes to the names of Funds from the names included in the Prior Release; and

⁶ The Trust is registered under the 1940 Act. On December 9, 2013, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”), and under the 1940 Act relating to the Funds (File Nos. 333-192733 and 811-22917) (as amended, the “Registration Statement”). The Trust filed supplements to amend the prospectus contained in the Registration Statement on July 17, 2015 and filed post-effective amendments to the Registration Statement on August 21, 2015, which amendment will become effective as of October 31, 2015, reflecting the changes to the Funds described herein. For the avoidance of doubt, the names and principal investment strategies of the WBI Tactical Income Shares and the WBI Tactical High Income Shares, which also are series in the Trust approved in the Prior Release, are not being changed. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812-13886) (“Exemptive Order”).

(2) to change representations relating to “Principal Investments” of each Fund in the Prior Release that each Fund will invest at least 80% of net assets in specified equity securities to representations that each Fund will seek to invest principally in such specified equity securities, cash and “Cash Equivalents” (as described below) when it believes this is consistent with each Fund’s investment objective of protecting principal.⁷ For clarity, each Fund will invest at least 80% of its net assets in its principal investment strategy.

WBI SMID Tactical Growth Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected on the basis of the Selection Process.⁸ Going forward, the Fund will seek to invest principally in the exchange-listed equity

⁷ Under the Prior Release, the Funds could temporarily depart from their respective 80% principal investment strategies and make “short term investments in cash, cash equivalents, high-quality short-term debt securities and money market instruments for temporary defensive purposes in response to adverse market, economic or political conditions. ... [E]ach Fund could acquire the following short-term investments: (1) certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; (2) bankers’ acceptances; (3) time deposits; and (4) commercial paper and short-term notes rated at the time of purchase “A-2” or higher by Standard & Poor’s®, “Prime-1” by Moody’s® Investors Services Inc., or similarly rated by another nationally recognized statistical rating organization, or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.” Such high-quality short-term debt securities, money market instruments and the investments enumerated above are hereinafter collectively referred to as “Cash Equivalents”. In this proposed rule change, Cash Equivalents will be included in each Fund’s principal investment strategy and no longer only for temporary defensive purposes. Intra-day price information for Cash Equivalents will be available from major market data vendors.

⁸ The Adviser represents that the Adviser and the Sub-Adviser have managed and will continue to manage the Funds in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative. The change to the name of the Funds and to the Funds’ investments as described herein will be effective upon the filing an additional amendment to the Registration Statement.

securities of small-capitalization and mid-capitalization domestic and foreign companies, cash and Cash Equivalents, selected on the basis of the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical SMG Shares.

WBI SMID Tactical Value Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical SMV Shares.

WBI SMID Tactical Yield Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed dividend-paying equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed dividend-paying equity securities of small-capitalization and mid-capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical SMY Shares.

WBI SMID Tactical Select Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and

mid-capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical SMS Shares.

WBI Large Cap Tactical Growth Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed equity securities of large capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process. In addition, going forward, the Fund's name will change to WBI Tactical LCG Shares.

WBI Large Cap Tactical Value Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed equity securities of large capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical LCV Shares.

WBI Large Cap Tactical Yield Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed dividend-paying equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed dividend-paying equity securities of large capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical LCY Shares.

WBI Large Cap Tactical Select Shares

As described in the Prior Release, under normal market conditions, the Fund invests at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser utilizing the Selection Process. Going forward, the Fund will seek to invest principally in the exchange-listed equity securities of large capitalization domestic and foreign companies, cash and Cash Equivalents, selected by the Sub-Adviser utilizing the Selection Process.

In addition, going forward, the Fund's name will change to WBI Tactical LCS Shares.

Except for the changes described above, all other representations made in the Prior Release remain unchanged.⁹ The Funds will comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁰ that an exchange have rules that are designed to prevent fraudulent and manipulative

⁹ See note 4, supra. All terms referenced but not defined herein are defined in the Prior Release.

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.

As noted above, the Selection Process attempts to provide consistent, attractive returns net of expenses with potentially less volatility and risk to capital than traditional approaches, whatever market conditions may be. While the Funds would continue to invest in the types of securities described in the Prior Release, the proposed change to represent that each Fund will seek to invest principally in specified exchange-listed equity securities, cash and Cash Equivalents, rather than at least 80% of its net assets in specified exchange-listed equity securities, would provide additional flexibility to seek each Funds' investment objective of protecting principal. The inclusion of cash and Cash Equivalents in each Fund's principal investments, rather than the use of such instruments solely for temporary defensive purposes, would facilitate each Fund's ability to protect principal, which could serve as a significant benefit for investors.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Shares are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. Except for the changes described above, all other representations made in the Prior Release remain unchanged.¹¹

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ See note 4, *supra*. All terms referenced but not defined herein are defined in the Prior Release.

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 Exchange believes the proposed rule change is designed to allow the Fund to invest in securities that would permit a Fund to better implement the Selection Process as described in the Prior Release, and will enhance competition among issues of Managed Fund Shares that invest in equity securities.

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

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.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiver of the 30-day operative delay period is consistent with the protection of investors and the public interest. The Commission notes that the proposal would allow the Funds greater flexibility in seeking their investment objective of protecting principal during unfavorable market conditions, which could benefit investors and the public interest. Therefore, the Commission designates the

proposed rule change to be operative upon filing.¹²

At any time within 60 days of the filing of the 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. Please include File Number SR-NYSEArca-2015-88 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-2015-88. 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

¹² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2015-88 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.¹³

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).