

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-60460; File No. SR-NYSEArca-2009-55)

August 7, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change to List and Trade Shares of the Dent Tactical ETF

On June 18, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Dent Tactical ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the Federal Register on July 8, 2009.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.⁴ The Shares will be offered by AdvisorShares Trust (“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.⁵ The investment advisor to the Fund is AdvisorShares Investments, LLC (“Advisor”), and the day-to-

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 60195 (June 30, 2009), 74 FR 32678 (“Notice”).

⁴ See NYSE Arca Equities Rule 8.600.

⁵ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On June 9, 2009, the Trust filed with the Commission a registration statement on Form N-1A (File Nos. 333-157876 and 811-22110) (“Registration Statement”).

day portfolio management of the Fund is provided by the sub-advisor to the Fund, HS Dent Investment Management, LLC (“Sub-Advisor”).⁶ The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,⁷ as provided by NYSE Arca Equities Rule 5.3.

The Fund is a “fund of funds,” which means that the Fund seeks to invest primarily in other exchange-traded funds that are registered under the 1940 Act and certain other exchange-traded products that are not registered as investment companies under the 1940 Act (collectively, “Underlying ETPs”).⁸ The Fund seeks to achieve its investment objective of long-term growth of capital by identifying, through proprietary economic and demographic analysis, the overall trend of the U.S. and global economies, and then implementing investment strategies in asset classes that the Sub-Advisor believes will benefit from these trends. The Sub-Advisor will follow its model to determine how offensive or defensive the Fund portfolio will be, and then will select the securities to buy or sell. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

Additional information regarding the Fund, the Shares, the Fund’s investment objective, strategies, methodology, and restrictions, the investment Advisor and Sub-Advisor, risks, fees and

⁶ The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. See Commentary .07 to NYSE Arca Equities Rule 8.600.

⁷ 17 CFR 240.10A-3.

⁸ Underlying ETPs include Investment Company Units (NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (NYSE Arca Equities Rule 8.100); Trust Issued Receipts (NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (NYSE Arca Equities Rule 8.201); Currency Trust Shares (NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (NYSE Arca Equities Rule 8.203); Trust Units (NYSE Arca Equities Rule 8.500); and Managed Fund Shares (NYSE Arca Equities Rule 8.600).

expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the Exchange's rules 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.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and the Exchange will disseminate the Portfolio Indicative Value ("PIV") at least every 15 seconds during the Core Trading Session through the facilities of the CTA. In addition, the Fund will make available on its Web site on each business day before commencement of the Core Trading Session

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 17 U.S.C. 78f(b)(5).

the Disclosed Portfolio that will form the basis for the Fund's calculation of the net asset value ("NAV").¹² A basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to trading volume, prices, and NAV. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day via electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Advisor and Sub-Advisor to the Fund are not affiliated with a broker-dealer.¹³ The Commission also notes that the Exchange will obtain a representation from the Fund that the NAV per Share will be calculated daily and that the NAV and the Disclosed

¹² The Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange (ordinarily 4:00 p.m. Eastern Time) on each business day.

¹³ See Commentary .07 to NYSE Arca Equities Rule 8.600. The Commission notes that any additional sub-advisers to the Fund that are affiliated with a broker-dealer will be required to implement a fire-wall with respect to such broker-dealer regarding access to information concerning the composition of the portfolio. Commentary .07 to NYSE Arca Equities Rule 8.600 also requires that any personnel who make decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

Portfolio will be made available to all market participants at the same time.¹⁴ Additionally, if it becomes aware that the NAV or the Disclose Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁵ Finally, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.¹⁶

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

¹⁴ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁵ See NYSE Arca Equities Rule 8.600(d)(2)(D). Trading in the Shares may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

¹⁶ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (4) The Fund will be in compliance with Rule 10A-3 under the Act.¹⁷
- (5) Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act¹⁸ and the rules and regulations thereunder applicable to a national securities exchange.

¹⁷ See supra note 7.

¹⁸ 15 U.S.C. 78f(b)(5).

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁹ that the proposed rule change (SR-NYSEArca-2009-55) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

¹⁹ 15 U.S.C. 78s(b)(2).

²⁰ 17 CFR 200.30-3(a)(12).