

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61842; File No. SR-NYSEArca-2010-10)

April 5, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing of Mars Hill Global Relative Value ETF (f/k/a HTE Global Relative Value ETF)

I. Introduction

On February 25, 2010, 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 Mars Hill Global Relative Value ETF (f/k/a HTE Global Relative Value ETF) (the “Fund”) under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the Federal Register on March 18, 2010.³ The Commission received no comments on the proposal. On March 29, 2010, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61683 (March 10, 2010), 75 FR 13194 (“Notice”).

⁴ Amendment No. 1 reflects that all references in the filing to “HTE Global Relative Value ETF” are replaced with “Mars Hill Global Relative Value ETF” and that all references in the filing to “HTE Asset Management LLC” are replaced with “Mars Hill Partners, LLC.” In addition, Amendment No. 1 reflects that all other representations in the filing remain as stated therein, except that representations referring to “HTE Global Relative Value ETF” and “HTE Asset Management LLC” are understood to mean and apply to “Mars Hill Global Relative Value ETF” and “Mars Hill Partners, LLC,” respectively.

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. The Shares will be offered by AdvisorShares 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.⁵ AdvisorShares Investments, LLC is the Fund’s investment advisor (the “Advisor”) and Mars Hill Partners, LLC (“Mars Hill”) is the Fund’s sub-advisor. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund’s shares, and the Bank of New York Mellon is the administrator, transfer agent, and custodian for the Fund.

The investment goal of the Fund is average annual returns in excess of the total return of the MSCI World Index (the “Index”), with comparable volatility and little to no correlation with the Index. The Fund is considered a “fund-of-funds” that seeks to achieve its investment objective by primarily investing in both long and short positions in other exchange-traded funds (the “Underlying ETFs”) that offer diversified exposure to global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and other exchange-traded products, including but not limited to exchange-traded notes (“ETNs”), exchange-traded currency trusts and closed-end funds. In addition, the Fund may use liquid futures contracts tied to broad market indices (e.g., futures contracts based on the S&P 500 Index, the MSCI EAFE Index and/or the MSCI Emerging Markets Index) when establishing net long or net short exposure on top of the core long/short portfolio.⁶ The Underlying ETFs in which the Fund will invest will primarily be

⁵ The Exchange states that the Trust is registered under the Investment Company Act of 1940 (“1940 Act”) and that on December 29, 2009, the Trust filed with the Commission Post-Effective Amendment No. 2 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund. (File Nos. 333-157876 and 811-22110) (“Registration Statement”).

⁶ The Fund may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed

index-based ETFs that hold substantially all of their assets in securities representing a specific index and will be traded on a U.S. national securities exchange. Except for Underlying ETFs that may hold non-US issues, the Fund will not otherwise invest in non-US issues.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares⁷ and that the Shares will comply with Rule 10A-3 under the Act,⁸ as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, 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.⁹

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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

of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes.

⁷ The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("NAV") per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. See Notice, *supra* note 3.

⁸ 17 CFR 240.10A-3.

⁹ See *supra* notes 3 and 5.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2010-10 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2010-10. 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 Web site (<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 Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will 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-2010-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. 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 Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² 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 notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

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,¹³ 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 high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day, before the commencement of trading in Shares in the Core Trading Session, the Disclosed Portfolio that will form the basis for the

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 17 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

calculation of the NAV, which will be determined at the end of the business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁴ and a calculation of the premium and discount of the Bid/Ask Price against the NAV and data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Information regarding the market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other 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 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 Exchange will obtain a representation from the issuer that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹⁵ Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily 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.¹⁶ Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the

¹⁴ The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by each ETF and its service providers.

¹⁵ See NYSE Arca Equities Rule 8.600(d)(1)(B).

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

Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁷ The Exchange represents that the Advisor is not affiliated with a broker-dealer and that any additional Fund sub-advisors 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 and/or changes to a portfolio. Further, 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.¹⁸

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.
- (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

¹⁷ Id. 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.

¹⁸ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

following: (a) the procedures for purchases and redemptions of Shares in Creation Unit aggregations 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.
- (5) The Underlying ETFs will be traded on a U.S. national securities exchange and, except for Underlying ETFs 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 the Act and the rules and regulations thereunder applicable to a national securities exchange.

V. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of securities, the

¹⁹ 15 U.S.C. 78s(b)(2).

characteristics of which are similar to those to be invested by the Funds.²⁰ The Commission also notes that it has received no comments regarding the proposed rule change. Further, the Commission believes that the changes in Amendment No. 1 to the name of the Fund and the Sub-Adviser do not raise any novel regulatory concerns, particularly because Amendment No. 1 makes clear that all other representations in the Notice remain as stated therein, except that representations in the Notice to HTE Global Relative Value ETF and HTE Asset Management LLC are understood to mean and to apply to Mars Hill Global Relative Value ETF and Mars Hill Partners, LLC, respectively. The Commission believes that accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

²⁰ See, e.g., Securities Exchange Act Release No. 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSEArca-2010-10), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Florence E. Harmon
Deputy Secretary

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).