

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63802; File No. SR-NYSEArca-2010-118)

January 31, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF

I. Introduction

On December 15, 2010, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 the following Managed Fund Shares under NYSE Arca Equities Rule 8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF. The proposed rule change was published for comment in the Federal Register on December 28, 2010.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the shares (“Shares”) of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF (each a “Fund” and, collectively, “Funds”) under NYSE Arca Equities Rule 8.600. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63587 (December 21, 2010), 75 FR 81697 (“Notice”).

company.⁴ The investment advisor to the Funds is AdvisorShares Investments, LLC (“Advisor”), and Strategic Income Management, LLC (“Sub-Advisor” or “SiM”) serves as investment sub-advisor to the Funds. Foreside Fund Services, LLC is the principal underwriter and distributor of the Funds’ Shares. The Bank of New York Mellon Corporation (“Administrator”) serves as the administrator, custodian, transfer agent, and fund accounting agent for the Funds. Each Fund is an actively managed exchange-traded fund (“ETF”) and thus does not seek to replicate the performance of a specified index, but uses an active investment strategy to meet its investment objective. Accordingly, the Sub-Advisor manages each Fund’s portfolio in accordance with each Fund’s investment objective.

SiM Dynamic Allocation Diversified Income ETF

This Fund’s objective is to provide total return, consisting primarily of reinvestment and growth of income with some long-term capital appreciation. The Fund is considered a “fund-of-funds” that will seek to achieve its investment objective by primarily investing in other ETFs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and exchange-traded products (“ETPs,” and, together with ETFs, “Underlying ETPs”) including, but not limited to, exchange-traded notes (“ETNs”), exchange-traded currency trusts, and closed-end funds.⁵

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On October 14, 2010, the Trust filed with the Commission Post-Effective Amendment No. 13 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333-157876 and 811-22110) (“Registration Statement”).

⁵ Underlying ETPs, which will be listed on a national securities exchange, include: Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as

The Fund will seek to offer the potential for total return from a high level of income and a low level of capital growth, with exposure to a low level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international fixed-income funds. The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets, and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs, if appropriate, when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

Under normal market conditions, the Fund's portfolio will generally:

- invest up to 85% of its assets in Underlying ETPs that hold fixed-income securities as well as cash equivalents;
- not invest more than 40% of its net assets in Underlying ETPs that primarily hold equity securities; and
- invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

SiM Dynamic Allocation Growth Income ETF

This Fund's objective is to provide total return, consisting primarily of long-term capital appreciation with some reinvestment and growth of income. The Fund is considered a "fund-of-funds" that will seek to achieve its investment objective by primarily investing in Underlying ETPs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and ETPs including, but not limited to, ETNs, exchange-traded currency trusts, and closed-end funds.

In general, the Fund will seek to offer investors the potential for total return from a low to medium level of income and a medium to high level of capital growth, while exposing them to a medium to high level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international equity funds. The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor's outlook for the economy, the financial markets, and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs when the Sub-Advisor's fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

The Fund's portfolio will generally:

- invest up to 85% of its assets in Underlying ETPs that hold equity securities as well as cash equivalents;
- not invest more than 40% of its net assets in Underlying ETPs that primarily hold fixed-income securities; and
- invest up to 20% of its assets in any single Underlying ETP.

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate

Other Investments

The Funds and the Underlying ETPs may invest in equity securities representing ownership interests in a company or partnership and that consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.⁶ The Funds may enter into repurchase agreements, which may be deemed to be loans, with financial institutions, and reverse repurchase agreements as part of the Funds' investment strategy. The Funds may also invest in U.S. government securities, U.S. Treasury zero-coupon bonds, and shares of real estate investment trusts, which are pooled investment vehicles that primarily invest in real estate or real estate-related loans. To respond to adverse market, economic, political, or other conditions, the Funds may invest 100% of their total assets, without limitation, in high-quality short-term debt securities and money market instruments.

Additional details regarding the Trust, Shares, and the Funds, including, among other things, investment strategies, risks, creations and redemptions of Shares, fees, portfolio holdings disclosure policies, distributions, taxes, the calculation of the net asset value ("NAV"), dissemination and availability of key information about the Funds, trading halts, trading rules, surveillance, and the Information Bulletin can be found in the Notice and the Registration Statement, as applicable.⁷

⁶ The Funds will hold only equity securities traded in the United States on registered exchanges.

⁷ See supra notes 3 and 4.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,⁹ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 it has approved the listing and trading of other similar Managed Fund Shares.¹⁰

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,¹¹ 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. In addition, the

⁸ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ See, e.g., Securities Exchange Act Release No. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (approving the listing and trading of the Cambria Global Tactical ETF, which is a "fund-of-funds" that seeks to invest primarily in other exchange-traded funds listed and traded in the United States and certain other exchange-traded products including, but not limited to, exchange-traded notes, exchange-traded currency trusts, and closed-end funds).

¹¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Portfolio Indicative Value will be disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. On each business day before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Funds' calculation of NAV at the end of the business day.¹² The NAV per Share for the Funds will be calculated by the Administrator and determined as of the close of the regular trading session on NYSE Arca (ordinarily 4:00 p.m., Eastern Time) on each day that the Exchange is open. Information regarding market price and trading volume of the Underlying ETPs will be continually available on a real-time basis throughout the day from major market data vendors, and last-sale and closing price information for Underlying ETPs will be available on the website of the national securities exchange on which such securities are listed or through major market data vendors. Information regarding market price and trading volume of the Shares will be continually available on a real time basis through the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers. The Funds' website will also include a form of the Prospectus for the Funds, information relating to NAV, and other quantitative and trading information. Further, 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.

¹² On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Funds 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 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 Exchange will obtain a representation from the issuer of the Shares that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹³ In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares to the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁴ In addition, NYSE Arca Equities Rule 8.600(d)(2)(B)(ii) requires that the Reporting Authority that provides the Disclosed Portfolio 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. Further, the Commission notes that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.¹⁵ In the event (a) the Advisor or the Sub-Advisor

¹³ See NYSE Arca Equities Rule 8.600(d)(1)(B) (also requiring that the Exchange obtain a representation from the issuer that NAV per Share for each Fund will be calculated daily).

¹⁴ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

¹⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600. With respect to the Funds, the Exchange represents that the Advisor and Sub-Advisor, and their related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) standards of business conduct that reflect the firm's/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws;

becomes newly affiliated with a broker-dealer, or (b) any new advisor or sub-advisor becomes affiliated with a broker-dealer, they 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, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing 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 has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) 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.

(iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer ("CCO") or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

- (4) 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 in Creation Unit aggregations (and that Shares are not individual 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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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.
- (5) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.
- (6) For initial and/or continued listing, the Funds will be in compliance with Rule 10A-3 under the Act.¹⁶

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 Act¹⁷ and the rules and regulations thereunder applicable to a national securities exchange.

¹⁶ 17 CFR 240.10A-3.

¹⁷ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁸ that the proposed rule change (SR-NYSEArca-2010-118), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Elizabeth M. Murphy
Secretary

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ 17 CFR 200.30-3(a)(12).