

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67277; File No. SR-NYSEArca-2012-39)

June 27, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading the Global Alpha & Beta ETF Pursuant to NYSE Arca Equities Rule 8.600

I. Introduction

On April 30, 2012, 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 shares (“Shares”) of the Global Alpha & Beta ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on May 17, 2012.³ The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. 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.⁴ The investment adviser to the Fund is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 66973 (May 11, 2012), 77 FR 29429 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On January 30, 2012, the Trust filed with the Commission Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-

AdvisorShares Investments, LLC (“Adviser”). Your Source Financial, PLC (“Sub-Adviser”) is the Fund’s sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon serves as the administrator, custodian, transfer agent, and fund accounting agent for the Fund. The Exchange represents that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.⁵

Description of the Fund

The Fund’s investment objective is long-term capital growth. The Fund is an exchange-traded fund (“ETF”) that is actively managed and thus does not seek to replicate the performance of a specific index. The Fund is a “fund of funds” that seeks to achieve its investment objective by investing, under normal conditions,⁶ 80% or more in other U.S.-listed exchange-traded products (“Underlying ETPs”),⁷ U.S. exchange-listed common stock of issuers of any

22110) (“Registration Statement”). In addition, the Exchange notes that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677) (“Exemptive Order”).

⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

⁶ “Normal conditions” as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

⁷ Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule

capitalization range, and U.S. exchange-listed sponsored American Depositary Receipts (“ADRs”)⁸ that provide investment exposure to global equity markets and that meet certain selection criteria established by the Sub-Adviser.

The Sub-Adviser will seek to achieve the Fund’s investment objective by implementing a “top-down” portfolio management style. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries, or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis. A “top-down” portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance.

Prior to making an investment for the Fund, the Sub-Adviser will consider two indicators:

(i) the 200-day moving average of the S&P 500 Index (“Index”); and (ii) an inverted yield

8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as 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. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Underlying ETPs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Fund intends to invest in ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (“Code”).

⁸ ADRs are U.S. dollar denominated receipts representing interests in the securities of a foreign issuer, which securities may not necessarily be denominated in the same currency as the securities into which they may be converted. ADRs are receipts typically issued by United States banks and trust companies which evidence ownership of underlying securities issued by a foreign corporation. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the United States. The Fund may invest up to 10% of total assets in ADRs traded over-the-counter.

curve.⁹ If the Index is below its 200-day moving average or if the yield curve is inverted, the Sub-Adviser will maintain a defensive position in the Fund's portfolio.¹⁰

The Fund's asset allocation and performance baseline benchmark is the Index. The Index consists of ten separate industry sectors – each of which has a weighting in the Index as a whole. In selecting investments for the Fund's portfolio, the Sub-Adviser will seek to add value by overweighting sectors that the Sub-Adviser expects to perform well and underweighting sectors that it expects to perform poorly.

The Sub-Adviser seeks to maintain diversification among and across economic sectors, industries, and countries. The Sub-Adviser will consider the following factors when selling investments in the Fund's portfolio: (i) whether an equity security has reached a price considered to be fully valued; (ii) business or sector risk exposure to a specific security or class of securities; (iii) overvaluation or overweighting of the position in the Fund's portfolio; (iv) change in risk tolerance; and (v) identification of a better opportunity.

Other Investments

While the Fund will invest at least 80% in the Underlying ETPs, U.S. exchange-listed common stock of issuers of any capitalization range, and U.S. exchange-listed sponsored ADRs, on a day-to-day basis, the Fund may hold the remainder of its assets in, under normal conditions, money market instruments, cash, other cash equivalents, and other highly liquid instruments.

⁹ An inverted yield curve occurs when short-term interest rates exceed long term rates and historically has been viewed as an indicator of a pending economic recession.

¹⁰ Such a defensive position would be a more conservative allocation involving any combination of (a) reducing equity exposures (i.e., U.S. exchange-listed common stock and U.S. exchange-listed ADRs), (b) investing in inverse ETFs (the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs), and (c) increasing investments in short-term, high-quality debt securities and money market instruments, cash, and cash equivalents, including through increasing investments in U.S. exchange-listed Underlying ETPs holding short-term debt or cash and cash equivalents.

The Fund may invest in other types of equity securities, which represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships. The Fund also may invest in exchange-traded notes ("ETNs"),¹¹ U.S. government securities, and U.S. Treasury zero-coupon bonds.

In the absence of normal conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through its investments in ETFs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements,¹² and bonds that are rated BBB or higher.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or

¹¹ ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured, and unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark, less investor fees.

¹² The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. In addition, the Fund may enter into reverse repurchase agreements as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of an ADR will be deemed to be the issuer of the respective underlying security.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this policy, the issuer of ADRs will be deemed to be the issuer of the respective underlying security.

The Fund will not purchase illiquid securities, including Rule 144A securities and loan participations.¹³ While the Fund does not anticipate doing so, the Fund may hold securities that become illiquid, including securities that are not readily marketable and Rule 144A securities. The Fund will not hold more than 15% of the Fund's net assets in illiquid securities including Rule 144A securities and loan participations. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities.

While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective. In addition, consistent with the Exemptive Order, the Fund will not invest in options contracts,

¹³ See Investment Company Act Release Nos. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008); and 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986).

futures contracts, or swap agreements.¹⁴ The Exchange also states that the Fund will not invest in any non-U.S. registered equity security, including depositary receipts, and will seek to qualify for treatment as a Regulated Investment Company under the Code.

Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes can be found in the Notice and Registration Statement, as applicable.¹⁵

III. 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 Act¹⁶ and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁸ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, 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 the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

¹⁴ See supra note 4.

¹⁵ See supra notes 3 and 4, respectively.

¹⁶ 15 U.S.C. 78f.

¹⁷ 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).

¹⁸ 15 U.S.C. 78f(b)(5).

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,¹⁹ 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, for the underlying securities, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.²⁰ On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of the net asset value ("NAV") at the end of the business day.²¹ The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC ("NYSE") (normally, 4:00 p.m., Eastern Time). In addition, information regarding market price and trading 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 information regarding the previous day's closing price

¹⁹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁰ According to the Exchange, several major market data vendors display and/or make widely available PIVs published on the CTA or other data feeds.

²¹ The Disclosed Portfolio will include, as applicable, for each portfolio security and other financial instrument of the Fund the following: ticker symbol; name of security and financial instrument; the number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge.

and trading volume information for the Shares will be published daily in the financial section of newspapers. The website for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information. In addition, 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 NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

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 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.²² 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 if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²³ The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made

²² See NYSE Arca Equities Rule 8.600(d)(1)(B).

²³ With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund 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.

available to all market participants at the same time.²⁴ Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.²⁵ The Commission notes that Adviser personnel who make decisions on a Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding that Fund's portfolio.²⁶ 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.²⁷ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that, for surveillance purposes, the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has entered into a

²⁴ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

²⁵ See supra note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser 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.

²⁶ See Commentary .06 to NYSE Arca Equities Rule 8.600.

²⁷ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

comprehensive surveillance sharing agreement,²⁸ including information from the U.S. exchanges on which the Fund's investments in Underlying ETPs, common stock, exchange-listed ADRs, and other U.S. exchange-listed securities are listed and traded.

The Exchange further 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 applicable to derivative products, which include Managed Fund Shares, 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.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not

²⁸ While not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement, all Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter. See Notice, supra note 3, at footnote 26. See also, supra note 8.

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 Equity Trading Permit 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) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,²⁹ as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund will not purchase illiquid securities, including Rule 144A securities and loan participations. While the Fund does not anticipate doing so, the Fund may hold securities that become illiquid, including securities that are not readily marketable, but will not hold more than 15% of its net assets in illiquid securities, including Rule 144A securities and loan participations. If the percentage of the Fund's net assets invested in illiquid securities exceeds 15% due to market activity, the Fund will take appropriate measures to reduce its holdings of illiquid securities.
- (7) Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements.
- (8) While the Fund may invest up to 10% of its total assets in leveraged, inverse, or inverse leveraged Underlying ETPs, such investments will not be used to enhance

²⁹ See 17 CFR 240.10A-3.

the leverage of the Fund as a whole and will otherwise be consistent with the Fund's investment objective.

- (9) All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter.
- (10) The Fund will not invest in any non-U.S. registered equity security, including depositary receipts.
- (11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

³⁰ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³¹ that the proposed rule change (SR-NYSEArca-2012-39) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Kevin M. O'Neill
Deputy Secretary

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).