

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-72665; File No. SR-NYSEArca-2014-59)

July 24, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the AdvisorShares Athena High Dividend ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On May 20, 2014, 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” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the AdvisorShares Athena High Dividend ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on June 9, 2014.³ On July 23, 2014, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to list and trade Shares of the Fund under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust (“Trust”), a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 72298 (June 3, 2014), 79 FR 33024 (“Notice”).

⁴ In Amendment No. 1, the Exchange clarifies that the Fund’s investments in reverse repurchase agreements will not be used to enhance leverage. Amendment No. 1 provides clarification to the proposed rule change, and because it does not materially affect the substance of the proposed rule change, or raise any unique or novel regulatory issues, Amendment No. 1 does not require notice and comment.

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 (“Adviser”) will be the investment adviser to the Fund, and AthenaInvest Advisors LLC (“Sub-Adviser”) will be the Fund’s sub-adviser and will provide day-to-day portfolio management of the Fund.⁶ The Bank of New York Mellon (“Administrator”) will serve as the administrator, custodian, transfer agent and accounting agent for the Fund. Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund’s Shares.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including other portfolio holdings and investment restrictions.⁷

⁵ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). The Exchange states that on February 18, 2014, the Trust filed with the Commission an amendment to 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 Fund (File Nos. 333-157876 and 811-22110) (“Registration Statement”). In addition, according to the Exchange, 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).

⁶ The Exchange represents that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer or is affiliated with a broker-dealer. The Exchange states that in the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, such adviser or sub-adviser will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio, and the adviser or sub-adviser will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

⁷ The Commission notes that 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, among other things, can be found in the Notice and the Registration Statement, as applicable. See Notice, supra note 3, and Registration Statement, supra note 5, respectively.

A. Principal Investments (under Normal Market Conditions)⁸

According to the Exchange, the Fund will seek long-term capital appreciation. The Fund will invest substantially all of the Fund's assets in (1) U.S. and foreign common stock of issuers of any capitalization range, and (2) American Depositary Receipts ("ADRs"), Global Depositary Receipts ("GDRs"), European Depositary Receipts ("EDRs") and International Depositary Receipts ("IDRs", and together with ADRs, GDRs, and EDRs, "Depositary Receipts") that provide investment exposure to global equity markets.⁹ Other than unsponsored ADRs, all U.S. and foreign common stocks and Depositary Receipts in which the Fund will invest will be exchange-traded.

⁸ The Exchange states that the term "under normal market conditions" means, without limitation, the absence of extreme volatility or trading halts in the equity 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.

⁹ ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are equity securities designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the U.S. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer; however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. ADRs may be purchased with and sold for U.S. dollars. ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of the Fund's net assets. Not more than 10% of the net assets of the Fund in the aggregate shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange states that the Sub-Adviser will manage the Fund’s portfolio based on its patented Behavioral Portfolio Management methodology. The Sub-Adviser will start by applying a quantitative behavioral screen that narrows the equity universe to securities held in large part by mutual funds the Sub-Adviser believes to be most consistently pursuing their investment strategy. The Sub-Adviser then will narrow this universe by a high dividend yield criteria and select positions for the portfolio based on the highest combined ranking of the two dimensions.

B. Other Fund Investments

The Exchange states that, while the Fund under normal market conditions will invest substantially all of the Fund’s assets in exchange-traded U.S. and foreign common stocks and Depositary Receipts, the Fund may invest in other securities and financial instruments, as described below.

The Exchange represents that the Fund may purchase equity securities (other than U.S. and foreign common stocks and Depositary Receipts) traded in the U.S. on registered exchanges, which would include preferred stock, rights, warrants, convertible securities,¹⁰ securities of master limited partnerships (“MLPs”),¹¹ securities of real estate investment trusts (“REITs”),¹² and shares of closed-end funds.¹³ The Fund may invest in affiliated and unaffiliated exchange-

¹⁰ Convertible securities are bonds, debentures, notes, preferred stocks or other securities that may be converted or exchanged (by the holder or by the issuer) into shares of the underlying common stock (or cash or securities of equivalent value) at a stated exchange ratio.

¹¹ MLPs are limited partnerships in which the ownership units are publicly traded.

¹² REITs are pooled investment vehicles which invest primarily in real estate or real estate related loans. REITs are generally classified as equity REITs, mortgage REITs or a combination of equity and mortgage REITs.

¹³ A closed-end fund is a pooled investment vehicle that is registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

traded funds (“ETFs”)¹⁴ and exchange-traded notes (“ETNs”).¹⁵ The Fund also may invest in the securities of exchange-traded pooled investment vehicles (together with ETFs and ETNs, “ETPs”) that are not investment companies and are not required to comply with the provisions of the 1940 Act. These pooled vehicles typically hold commodities, such as gold or oil, currency, or other property that is itself not a security.¹⁶

The Exchange states that on a day-to-day basis, the Fund may hold money market instruments, cash, other cash equivalents, and ETPs that invest in these and other highly liquid instruments. Further, the Exchange represents that the Fund may invest in the securities of other investment companies, including mutual funds and business development companies (“BDCs”),¹⁷ to the extent that such an investment would be consistent with the requirements of

¹⁴ For purposes of this filing, ETFs 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); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). All the ETFs in which the Fund will invest will be listed and traded on national securities exchanges. The Fund will invest in the securities of ETFs registered under the 1940 Act 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 Regulation M of the Internal Revenue Code of 1986, as amended (“Internal Revenue Code”). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁵ ETNs include securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6) (“Index-Linked Securities”). ETNs are senior, unsecured, unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees. ETNs have a maturity date and, generally, are backed only by the creditworthiness of the issuer.

¹⁶ Such pooled investment vehicles include 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 described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and Trust Units (as described in NYSE Arca Equities Rule 8.500).

¹⁷ A BDC is a less common type of exchange-traded closed-end investment company that more closely resembles an operating company than a typical investment company. BDCs generally focus on investing in, and providing managerial assistance to, small,

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.

The Exchange represents that the Fund may invest in variable and floating rate instruments, which involve certain obligations that may carry variable or floating rates of interest, and may involve a conditional or unconditional demand feature.¹⁸ The Fund may invest in bank obligations, which would include certificates of deposit, bankers' acceptances, and fixed time deposits.¹⁹ The Exchange also states that the Fund may invest in municipal securities.

The Exchange represents that the Fund may seek to invest in corporate debt securities,²⁰ including debt issued by domestic or foreign companies of all kinds, and including those with

developing, financially-troubled, private companies or other companies that may have value that can be realized over time and with management assistance.

¹⁸ The Exchange states that such instruments bear interest at rates which are not fixed, but which vary with changes in specified market rates or indices, and that the interest rates on these securities may be reset daily, weekly, quarterly, or some other reset period, and may have a set floor or ceiling on interest rate changes. The Exchange states that a demand instrument with a demand notice exceeding seven days may be considered illiquid if there is no secondary market for such security.

¹⁹ Certificates of deposit are negotiable certificates issued against funds deposited in a commercial bank for a definite period of time and earning a specified return. Bankers' acceptances are negotiable drafts or bills of exchange, normally drawn by an importer or exporter to pay for specific merchandise, which are "accepted" by a bank, meaning, in effect, that the bank unconditionally agrees to pay the face value of the instrument on maturity. Fixed time deposits are bank obligations payable at a stated maturity date and bearing interest at a fixed rate.

²⁰ Corporate debt securities are typically fixed-income securities issued by businesses to finance their operations. Notes, bonds, debentures and commercial paper are the most common types of corporate debt securities. The primary differences between the different types of corporate debt securities are their maturities and secured or unsecured status. Commercial paper has the shortest term and is usually unsecured. Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. The Fund may invest in commercial paper rated A-1 or A-2 by Standard and

small-, mid-, and large-capitalizations. The Fund also may invest in corporate debt securities representative of one or more high-yield bond or credit derivative indices. The Exchange represents that the Fund may invest in all grades of corporate debt securities, including below investment grade (such debt may carry variable or floating rates of interest) and unrated corporate debt securities.

The Fund may invest in non-investment-grade debt securities²¹ and unrated debt securities. The Exchange represents that the creditworthiness of the issuer, as well as any financial institution or other party responsible for payments on the security, will be analyzed to determine whether to purchase unrated bonds.

The Exchange represents that the Fund may invest up to 10% of net assets in asset-backed and commercial mortgaged-backed securities.²²

The Fund may also invest in inflation-indexed bonds.²³ The Fund may invest in U.S. government securities, including U.S. Treasury securities. The Fund may invest in separately traded principal and interest components of securities guaranteed or issued by the U.S. government or its agencies, instrumentalities, or sponsored enterprises if such components trade

Poor's Ratings Services ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("Moody's").

²¹ Non-investment-grade securities, also referred to as "high yield securities" or "junk bonds," are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (for example, lower than Baa3 by Moody's or lower than BBB- by S&P) or are determined to be of comparable quality by the Fund's Sub-Adviser.

²² Asset-backed securities are securities backed by installment contracts, credit-card receivables or other assets. Commercial mortgage-backed securities are securities backed by commercial real estate properties. Both asset-backed and commercial mortgage-backed securities represent interests in "pools" of assets in which payments of both interest and principal on the securities are made on a regular basis.

²³ Inflation-indexed bonds are fixed income securities whose principal value is periodically adjusted according to the rate of inflation.

independently under the Separate Trading of Registered Interest and Principal of Securities program (“STRIPS”) or any similar program sponsored by the U.S. government.²⁴ The Fund may invest in U.S. Treasury zero-coupon bonds.²⁵

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Exchange represents that the Fund will follow certain procedures designed to minimize the risks inherent in such agreements, including 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 Exchange represents that the value of the collateral underlying the repurchase agreements will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. The Exchange states that the Fund will not invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, would amount to more than 15% of the Fund’s net assets. The Fund may also enter into reverse repurchase agreements as part of the Fund’s investment strategy.²⁶ The Exchange represents that the Fund’s investments in reverse repurchase agreements will not be used to enhance leverage.²⁷

²⁴ The Exchange states that STRIPS may be sold as zero coupon securities.

²⁵ The Exchange states that these securities are U.S. Treasury bonds which have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons, and that interest is not paid in cash during the term of these securities, but is accrued and paid at maturity.

²⁶ 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.

²⁷ See supra note 4.

C. Fund Investment Restrictions

The Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities deemed illiquid by the Adviser or Sub-Adviser,²⁸ in accordance with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund may not, 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 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 acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.

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.

²⁸ In reaching liquidity decisions, the Adviser or Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

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. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

The Exchange represents that the Fund will not invest in options, futures, swaps or other derivatives. It further represents that the Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²⁹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act,³⁰ 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 Fund and 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 Exchange Act,³¹ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the

²⁹ 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).

³⁰ 15 U.S.C. 78f(b)(5).

³¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

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. In addition, the Portfolio Indicative Value of the Fund,³² 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 Core Trading Session.³³ 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 NAV at the end of the business day.³⁴ In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for the Fund’s Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange, LLC (“NYSE”) via the National Securities Clearing Corporation. The Administrator will calculate the NAV and NAV per Share of the Fund once each business day as of the regularly scheduled close of normal trading on the NYSE (normally,

³² According to the Exchange, the Portfolio Indicative Value is based on current information regarding the value of the securities and other assets in the Disclosed Portfolio. The Portfolio Indicative Value should not be viewed as a “real-time” update of the NAV per Share of the Fund, which will be calculated once per day.

³³ The Exchange states that several major market data vendors display or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

³⁴ On a daily basis, the Adviser will disclose on behalf of the Fund on the Fund’s website each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable); name of security and financial instrument; number of shares, if applicable; 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.

4:00 p.m., Eastern Time).³⁵ 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. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the U.S. exchange-listed equity securities, including common stocks, ETPs, closed-end funds, exchange-traded pooled investment vehicles, Depositary Receipts, MLPs, REITs, warrants, rights, preferred stocks, BDCs and convertible

³⁵ The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV per Share. According to the Exchange, price information for exchange-listed securities, including common stocks, ETFs, ETNs, closed-end funds, exchange-traded pooled investment vehicles, Depositary Receipts, MLPs, REITs, warrants, rights, preferred stocks, BDCs and convertible securities will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the security is primarily traded at the time of valuation or, if no sale has occurred, at the last quoted bid price on the primary market or exchange on which they are traded. Other portfolio securities and assets for which market quotations are not readily available or determined to not represent the current fair value will be valued based on fair value as determined in good faith in accordance with procedures adopted by the Trust's Board of Trustees and in accordance with the 1940 Act. Unsponsored ADRs will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed. Investment company securities, other than ETFs and BDCs, (including mutual funds), will be valued at NAV. Domestic and foreign fixed income securities, including U.S. government securities, repurchase agreements, reverse repurchase agreement, variable and floating rate securities, bank obligations, corporate debt securities, zero-coupon bonds, commercial paper, inflation-indexes bonds, mortgage-backed securities and asset-backed securities generally trade in the over-the-counter market rather than on a securities exchange, and the Fund will generally value these portfolio securities by relying on independent pricing services. The Fund's pricing services will use valuation models or matrix pricing to determine current value. In general, pricing services use information with respect to comparable bond and note transactions, quotations from bond dealers or by reference to other securities that are considered comparable in such characteristics as rating, interest rate, maturity date, option adjusted spread models, prepayment projections, interest rate spreads and yield curves. Matrix price is an estimated price or value for a fixed-income security. Matrix pricing is considered a form of fair value pricing.

securities will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Information regarding unsponsored ADRs will be available from major market data vendors. Intra-day and closing price information relating to the fixed income investments of the Fund will be available from major market data vendors. Price information regarding investment company securities will be available from on-line sources and from the website for the applicable investment company securities. The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

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 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. Trading in the Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading in the Shares of the Fund may be halted because of other market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable,³⁶ and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth additional circumstances under which trading in Shares of the Fund may be halted. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca

³⁶ These reasons may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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.

Equities Rule 8.600(d)(2)(B)(ii), the Reporting Authority 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 Fund’s portfolio. In addition, the Exchange represents that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer or is affiliated with a broker-dealer.³⁷ Prior to the commencement of trading, the Exchange states that it will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.³⁸ The Exchange further represents that these procedures are adequate to properly monitor Exchange-trading of the Shares in all trading sessions and to deter and detect

³⁷ See supra note 6. The Exchange states 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.

³⁸ The Exchange states that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA’s performance under this regulatory services agreement.

violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange states that the FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded assets, as applicable, with other markets and other entities that are members of the ISG, and that FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and underlying exchange-traded assets from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded assets from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund that is reported to FINRA's Trade Reporting and Compliance Engine.

The Exchange represents that the Exchange deems the Shares to be equity securities, thus 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) Trading in the Shares will be subject to the existing trading surveillances, administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and that these 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 federal securities laws applicable to trading on the Exchange.

- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit 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 individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit 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 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 continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,³⁹ as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

³⁹ 17 CFR 240.10A-3.

- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A Securities deemed illiquid by the Advisor or Sub-Advisor, in accordance with Commission guidance.
- (8) Other than unsponsored ADRs, all U.S. and foreign common stocks and Depository Receipts in which the Fund will invest will be exchange-traded. Unsponsored ADRs will not exceed 10% of the Fund's net assets.
- (9) Not more than 10% of the net assets of the Fund in the aggregate shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (10) The Fund may invest up to 10% of net assets in asset-backed and commercial mortgaged-backed securities.
- (11) The Fund will not invest in options, futures, swaps or other derivatives.
- (12) 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, including those set forth above and in the Notice, and the Exchange's description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act⁴⁰ and the rules and regulations thereunder applicable to a national securities exchange.

⁴⁰ 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁴¹ that the proposed rule change (SR-NYSEArca-2014-59), as modified by Amendment No. 1, be, and it hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴²

Kevin M. O'Neill
Deputy Secretary

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² 17 CFR 200.30-3(a)(12).