

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-74595; File No. SR-NYSEArca-2015-04)

March 27, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator IBD[®] 50 Fund under NYSE Arca Equities Rule 8.600

On January 30, 2015, NYSE Arca, Inc. (the “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 Innovator IBD[®] 50 Fund (“Fund”). On February 12, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposal in its entirety. The proposed rule change was published for comment in the Federal Register on February 20, 2015.³ No comments on the proposal have been received. This order approves the proposed rule change, as modified by Amendment No. 1.

I. The Exchange’s Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares under 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 Academy Funds Trust (the “Trust”), an open-end management investment company.⁴ The Fund will issue and sell Shares only in “Creation Unit” size at the NAV next determined after receipt, on any business day, of an order in proper form.⁵

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 74278 (February 13, 2015), 80 FR 9294.

⁴ The Trust is registered under the 1940 Act. On October 9, 2014 and on December 19, 2014, the Trust filed with the Commission amendments 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. 333-146827 and 811-22135)

The investment adviser to the Fund will be Innovator Management LLC (the “Adviser”). Penserra Capital Management LLC will be the Fund’s sub-adviser (“Sub-Adviser”). Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Adviser is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund’s portfolio.⁶ U.S. Bank, N.A.(the “Administrator” or “Custodian”) will serve as the administrator, custodian and transfer agent for the Fund. Quasar Distributors, LLC will be the principal underwriter and distributor of the Shares.

(“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 31248 (September 9, 2014) (File No. 812-14308) (“Exemptive Order”).

⁵ A Creation Unit consists of 25,000 Shares, and the size of a Creation Unit is subject to change. See Notice, supra note 3, 80 FR at 9296.

⁶ Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. 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 any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The investment objective of the Fund will be to seek long-term capital appreciation. Under normal circumstances,⁷ the Fund will invest at least 80% of its net assets in companies included in the IBD[®] 50 Index (“Index”) and in U.S. exchange-traded equities.⁸ Typically, the Fund will hold U.S. exchange-traded common stocks as well as U.S. exchange-traded master limited partnerships (“MLPs”), real estate investment trusts (“REITs”), royalty trusts and business development companies (“BDCs”). It will invest primarily in U.S. equity securities but may, to a lesser extent, invest in equity securities of foreign companies in both developed and emerging markets, generally through American depositary receipts (“ADRs”). The Fund may invest in companies of any size.

Other Portfolio Holdings. The Fund may invest in money market securities for liquidity and cash management purposes or if the Adviser or Sub-Adviser determines that securities meeting the Fund’s investment objective and policies are not otherwise readily available for purchase. Money market securities include (i) short-term U.S. government securities; (ii) commercial paper rated in the highest short-term rating category by a nationally recognized statistical ratings organization (“NRSRO”), such as Standard & Poor’s or Moody’s, or determined by the Adviser or Sub-Adviser to be of comparable quality at the time of purchase; (iii) short-term bank obligations (certificates of deposit, time deposits and bankers’ acceptances)

⁷ The term “under normal circumstances” 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.

⁸ The Index is a computer-generated stock index published by Investor’s Business Daily[®] (“IBD[®]”). IBD[®] uses proprietary fundamental and technical ratings to compile what IBD[®] considers the 50 leading growth companies that trade on U.S. national securities exchanges. Companies included in the Index must meet minimum earnings, sales, profit margin, volume and technical requirements.

of U.S. domestic banks, foreign banks and foreign branches of domestic banks, and commercial banks with assets of at least \$1 billion as of the end of their most recent fiscal year;

(iv) repurchase agreements involving such securities; and (v) money market mutual funds.

The Fund may invest in securities of other investment companies (other than BDCs), including shares of the following: (1) exchange-traded funds (“ETFs”), unit investment trusts, and closed-end investment companies, each of which will be listed and traded on a U.S. national securities exchange, and (2) non-exchange-listed open-end investment companies.

II. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, 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 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 also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress’s 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.

⁹ 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).

Quotation and last-sale information for the Shares and U.S. exchange-listed equity securities will be available via the Consolidated Tape Association (“CTA”) high-speed line, and will be available from the national securities exchange on which they are listed.¹⁰ The Exchange represents that intra-day and closing price information relating to the investments of the Fund will be available from major market data vendors and from securities exchanges, as applicable.¹¹ Further, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), based on current information regarding the value of the securities and other assets in the Disclosed Portfolio, will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.¹² The Custodian, through the National Securities Clearing Corporation (“NSCC”) will make available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit¹³ (based on information at the end of the previous business day) for the Fund.¹⁴ In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the

¹⁰ See Notice, supra note 3, 80 FR at 9298.

¹¹ See id. Price information regarding money market mutual funds will be available from on-line sources and from the website for the applicable fund. See id.

¹² The Exchange understands that several major market data vendors display or make widely available Portfolio Indicative Values taken from CTA or other data feeds. See id., n.26.

¹³ The “Fund Deposit” is the consideration for purchase of Creation Units of the Fund, which generally will consist of the in-kind deposit of a designated portfolio of equity securities and an amount of cash. See id. at 9296-97.

¹⁴ See id. at 9297.

NYSE via the NSCC.¹⁵ The NAV of the Fund will be calculated at the close of regular trading (ordinarily 4:00 p.m. Eastern time) every day the New York Stock Exchange is open for trading.¹⁶ Information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.¹⁷ 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.¹⁸

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 of the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, trading in the Shares would be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which set forth circumstances under which trading in the Shares may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.¹⁹ Further, the Commission notes that the Adviser, as the Reporting Authority, that provides the Disclosed Portfolio must implement and maintain, or be

¹⁵ See id. at 9298.

¹⁶ See id. at 9296.

¹⁷ See id. at 9298.

¹⁸ See id.

¹⁹ These 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. See id.

subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the Fund’s portfolio.²⁰ In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded equity securities from markets and other entities that are members of Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.²¹ The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers. The Exchange represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund’s portfolio.²²

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

Additionally, in support of its proposal, the Exchange has made the following representations:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

²⁰ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

²¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²² The Exchange also represents that, in the event that (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 any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See Notice, *supra* note 3, 80 FR at 9300.

- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (4) Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying exchange-traded equity securities, from such markets and other entities.
- (5) 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: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) 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; (3) 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; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) 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 (6) trading information.

- (6) The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3²³ under the Act, as provided by NYSE Arca Equities Rule 5.3.
- (7) The Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.
- (8) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.
- (9) Not more than 10% of the net assets of the Fund in the aggregate invested in exchange-traded equity securities 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 will not invest in options, futures contracts or swaps agreements.
- (11) The Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

This approval order is based on all of the Exchange's representations and description of the Funds.

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

²³ 17 CFR 240.10A-3.

III. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NYSEArca-2015-04), 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.²⁴

Brent J. Fields
Secretary

²⁴ 17 CFR 200.30-3(a)(57).