

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77847; File No. SR-NYSEArca-2016-64)

May 17, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Shares of the AdvisorShares KIM Korea Equity ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 2, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On May 13, 2016, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaces and supersedes the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the shares of the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): AdvisorShares KIM Korea Equity ETF. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares³: AdvisorShares KIM Korea Equity ETF (“Fund”). The Shares will be offered by AdvisorShares Trust (the “Trust”)⁴, an open-end management investment company.⁵ The investment adviser to

³ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁴ The Trust is registered under the 1940 Act. On March 25, 2016, 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. 333-157876 and 811-22110) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the 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. 29291(May 28, 2010) (File No. 812-13677) (“Exemptive Order”).

⁵ The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR-NYSEArca-2011-51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF); 75023 (May 21,

the Fund will be AdvisorShares Investments LLC (the “Adviser”). Korea Investment Management Co., Ltd., will be the Fund’s sub-adviser (“Sub-Adviser”). Foreside Fund Services, LLC (the “Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (the “Administrator” or “Custodian”) will serve as the administrator, custodian and transfer agent for the Fund.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 further 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.⁷ Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to

2015), 80 FR 30519 (May 28, 2015) (SR-NYSEArca-2014-100) (order approving proposed rule change relating to the listing and trading of shares of the SPDR SSgA Global Managed Volatility ETF under NYSE Arca Equities Rule 8.600); 77463 (March 29, 2016), 81 FR 19255 (April 4, 2016) (SR-NYSEArca-2015-107) (order approving proposed rule change to list and trade shares of the REX Gold Hedged S&P 500 ETF and the REX Gold Hedged FTSE Emerging Markets ETF under NYSE Arca Equities Rule 8.600).

⁶ This Amendment No. 1 to SR-NYSEArca-2016-49 [sic] replaces SR-NYSEArca-2016-49 [sic] as originally filed and supersedes such filing in its entirety.

⁷ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “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)

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. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. 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.

Principal Investments

According to the Registration Statement, the Fund will seek to provide long-term capital appreciation above the capital appreciation of its primary benchmark, the MSCI Korea Index, and other Korea-focused indexes. The Fund will seek to achieve its investment objective by investing primarily in growth-oriented stocks of any capitalization range listed on the Korea Exchange. Under normal circumstances⁸, the Fund will invest at least 80% of its net assets (plus

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.

⁸ 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

any borrowings for investment purposes) in equity securities listed on the Korea Exchange.⁹ The Sub-Adviser will manage the Fund's portfolio by buying and holding stocks of companies at attractive valuation that it believes have growth potential. The Sub-Adviser will focus on corporate fundamental research in its stock selection, often called "bottom up" analysis. The Sub-Adviser will invest the Fund's assets with a mid- to long-term view, typically seeking to avoid short-term trading. In selecting investments for the Fund's portfolio, the Sub-Adviser will place emphasis on fundamentals rather than on short-term momentum and continuously monitor market risks. In deciding whether to sell investments in the Fund's portfolio, the Sub-Adviser will consider the following factors: a company's stock price reaches its target price; a company in the portfolio experiences negative fundamental changes; errors are found in the previous assumptions or forecasts of a company; and more profitable alternatives are found.

In addition to individual stock selection, the Sub-Adviser will engage in sector allocation based on analysis of the macro economy and its effect on corporate competitiveness and industry cycles. This is often called "top down" analysis. The Sub-Adviser will strive to invest with large economic cycles as compared to short-term market trends and short-term supply and demand.

Other Investments

While the Fund, under normal circumstances, will invest at least 80% of its assets in the securities described above, the Fund may invest its remaining assets in the securities and financial instruments described below.

God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

⁹ The Korea Exchange is a member of the Intermarket Surveillance Group ("ISG").

In addition to the common stocks of Korean companies referenced in the Principal Investments section above, the Fund may invest in the following equity securities traded on a U.S. or foreign exchange or over-the-counter (“OTC”), including equity securities of foreign issuers in emerging countries: common stocks, preferred stocks, warrants, rights, securities convertible into common stock, and investments in master limited partnerships (“MLPs”).

The Fund will invest in issuers located outside the United States directly and may invest in exchange-traded funds (“ETFs”)¹⁰, exchange-traded notes (“ETNs”)¹¹ and exchange-traded products (“ETPs”)¹² that are indirectly linked to the performance of foreign issuers, and “Depository Receipts”, which are American Depository Receipts (“ADRs”), Global Depository Receipts (“GDRs”), European Depository Receipts (“EDRs”), International Depository Receipts (“IDRs”), “ordinary shares,” and “New York shares” issued and traded in the U.S.¹³

¹⁰ For purposes of this proposed rule change, ETFs are Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered 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 ETF investments in conformity with the requirements of Regulation M of the Internal Revenue Code of 1986, as amended. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (e.g., 2X or 3X).

¹¹ ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs (e.g., 2X or 3X).

¹² For purposes of this proposed rule change, ETPs include Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200) and Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202). While the Fund may invest in inverse ETPs, the Fund will not invest in leveraged or inverse leveraged ETPs (e.g., 2X or 3X).

¹³ According to the Registration Statement, 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

The Fund may invest in the securities of non-exchange-traded investment company securities to the extent that such an investment would be 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. Consistent with such restrictions discussed above, the Fund may invest in U.S. and non-U.S. exchange-listed closed-end funds and business development companies (“BDCs”). Except with respect to ETFs, as described above¹⁴, the Fund will not invest in inverse, leveraged, or inverse leveraged investment company securities.

The Fund may invest in U.S. government securities. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include the following: U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance; U.S. Treasury bills, which have initial maturities of one year or less; U.S. Treasury notes, which have initial maturities of one to ten years; U.S. Treasury bonds, which generally have initial maturities of greater than ten years; and U.S. Treasury zero-coupon bonds. The Fund may invest in certain U.S. government securities that are issued or guaranteed by agencies or instrumentalities of the U.S. government

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 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. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars. Not more than 10% of the Fund’s assets will be invested in non-exchange-traded ADRs. Other ADRs in which the Fund invests will be exchange-traded.

¹⁴ See note 11, supra.

including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association (“Fannie Mae”), the Federal Home Loan Mortgage Corporation (“Freddie Mac”), and the Government National Mortgage Association (“Ginnie Mae”).

The Fund may invest in non-exchange-traded convertible securities that are bonds, debentures, notes, 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.

The Fund may invest in shares of U.S. or non-U.S. exchange-traded real estate investment trusts (“REITs”).

The Fund may invest in repurchase agreements and reverse repurchase agreements.

The Fund may purchase securities on a when-issued, delayed-delivery or forward commitment basis (i.e., delivery and payment can take place between a month and 120 days after the date of the transaction).

To respond to adverse market, economic, political or other conditions, the Fund may invest up to 100% of its total assets in high-quality, short-term debt securities and money market instruments either directly or through ETFs. The Fund may be invested in this manner for extended periods, depending on the Sub-Advisor’s assessment of market conditions. Debt securities and money market instruments are the following: shares of other mutual funds, commercial paper, certificates of deposit, bankers’ acceptances, U.S. government securities, repurchase agreements, and bonds that are rated BBB or higher.

Investment Restrictions

According to the Registration Statement, the Fund will be classified as a diversified investment company under the 1940 Act.¹⁵

The Fund intends to qualify as a “regulated investment company” for purposes of the Internal Revenue Code of 1986.¹⁶

The Fund may hold up to an aggregate amount of 15% of its net assets in assets deemed illiquid by the Adviser.¹⁷ 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.¹⁸

¹⁵ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

¹⁶ 26 U.S.C. 851.

¹⁷ Under the supervision of the Fund’s Board of Trustees (“Board”), the Adviser determines the liquidity of the Fund’s investments. In determining the liquidity of the Fund’s investments, the Adviser may consider various factors, including (1) the frequency and volume of trades and quotations; (2) the number of dealers and prospective purchasers in the marketplace; (3) dealer undertakings to make a market; and (4) the nature of the security and the market in which it trades (including any demand, put or tender features, the mechanics and other requirements for transfer, any letters of credit or other credit enhancement features, any ratings, the number of holders, the method of soliciting offers, the time required to dispose of the security, and the ability to assign or offset the rights and obligations of the security).

¹⁸ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund’s portfolio security is illiquid if it cannot be disposed of in the ordinary course of business

The Fund may not:

- (a) With respect to 75% of its total assets, (i) 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 (ii) acquire more than 10% of the outstanding voting securities of any one issuer.
- (b) 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. 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 Fund will not invest in options, futures, swaps or forward contracts.

The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).¹⁹

Creation and Redemption of Shares

within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the 1933 Act).

¹⁹ The Fund's broad-based securities benchmark index will be identified in a future amendment to the Registration Statement following the Fund's first full calendar year of performance.

According to the Registration Statement, the Trust will issue and sell Shares of the Fund only in “Creation Units” of at least 25,000 Shares on a continuous basis through the Distributor, at their net asset value (“NAV”) next determined after receipt, on any business day, of an order received in proper form.

Creation Units of the Fund will be sold only for cash (“Cash Purchase Amount”). Creation Units will be sold at the NAV next computed, plus a transaction fee. The Trust reserves the right to offer an in-kind option for creations of Creation Units for the Fund.

To be eligible to place orders with the Distributor to create a Creation Unit of the Fund, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (“NSCC”), a clearing agency that is registered with the Commission; or (ii) a Depository Trust Company (“DTC”) Participant, and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (“Participant Agreement”). A Participating Party and DTC Participant are collectively referred to as an “Authorized Participant.”

All orders to create Creation Units must be received by the Distributor no later than the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., Eastern Time), in each case on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form.

All purchases of the Fund will be effected through a transfer of cash directly through DTC.

Shares may be redeemed only in Creation Units at their NAV next determined after

receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day.

The redemption proceeds for a Creation Unit of the Fund will consist solely of cash in an amount equal to the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee (the “Cash Redemption Amount”). The Trust reserves the right to offer an in-kind option for redemptions of Creation Units for the Fund.²⁰

The right of redemption may be suspended or the date of payment postponed with respect to the Fund (1) for any period during which the NYSE is closed (other than customary weekend and holiday closings); (2) for any period during which trading on the NYSE is suspended or restricted; (3) for any period during which an emergency exists as a result of which disposal of the Shares of the Fund or determination of the Shares’ NAV is not reasonably practicable; or (4) in such other circumstance as is permitted by the Commission.

Net Asset Value

According to the Registration Statement, the Fund will calculate NAV by (i) taking the current market value of its total assets, (ii) subtracting any liabilities, and (iii) dividing that amount by the total number of Shares owned by shareholders.

The Fund will calculate NAV once each business day as of the regularly scheduled close of normal trading on the New York Stock Exchange (the “NYSE”) (normally 4:00 p.m. Eastern Time).

In calculating NAV, the Fund generally will value its portfolio investments at market prices. Given that the Fund’s investments generally trade on a foreign exchange, they will be

²⁰ Creations or redemptions conducted in cash will be effected in the same manner for all Authorized Participants.

valued based on their closing prices on that exchange, subject to possible adjustment.

Investments in stocks traded on the Korea Exchange will be valued based on the applicable closing price on the Korea Exchange.

The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV per Share. The NAV per Share for the Fund will be calculated by the Administrator and determined as of the regularly scheduled close of normal trading on the NYSE (normally 4:00 p.m. Eastern Time) on each day that the NYSE is open.

In computing the Fund's NAV, the Fund's securities holdings will be valued based on their last readily available market price. Price information on listed securities, including ETFs, ETNs and ETPs in which the Fund invests, will be taken from the exchange where the security is primarily 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 by the Fund's Sub-Adviser in accordance with procedures adopted by the Fund's Board of Trustees ("Board").

Exchange-traded equity securities, including common stocks, ETFs, ETNs, ETPs, preferred stocks, rights, warrants, convertible securities, closed-end funds, certain Depositary Receipts, MLPs, REITs, and BDCs 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. If market

prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board.

OTC-traded common stocks, OTC ADRs, preferred stocks, rights, warrants, convertible securities, and MLPs will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date. If such OTC-traded security does not trade on a particular day, then the mean between the last quoted closing bid and asked price will be used.

Non-exchange-traded convertible securities, U.S. government securities, short-term debt securities, repurchase agreements and reverse repurchase agreements will be valued at prices supplied by approved pricing services.

Investment company securities (other than exchange-traded investment company securities) will be valued at NAV.

Availability of Information

The Fund's website (www.advisorshares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),²¹ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts

²¹ The Bid/Ask Price of Shares of the Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. 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 that will form the basis for the Fund's calculation of NAV at the end of the business day.²²

On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities (as applicable) 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 NSCC. The basket will represent one Creation Unit of the Fund.

Investors can also obtain the Fund's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or

²² Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

downloaded from the Commission's website at www.sec.gov. 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. Price information for stocks listed on the Korea Exchange is available from the Korea Exchange website and from major market data vendors. Quotation and last sale information for the Shares and U.S. exchange-listed equity securities, including common stocks, ETFs, ETNs, ETPs, preferred stocks, rights, warrants, convertible securities, closed-end funds, MLPs, REITs, and BDCs and certain Depositary Receipts 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. Prices related to foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertible securities, MLPs, REITs and BDCs will be available from the applicable exchange or from major market data vendors. Intra-day and closing price information relating to OTC-traded common stocks, OTC ADRs, preferred stocks, rights, warrants, convertible securities and MLPs will be available from major market data vendors. Price information regarding investment company securities (other than exchange-traded investment company securities) will be available from the applicable fund. Price information regarding U.S. government securities, short-term debt securities, non-exchange-traded convertible securities, money market funds, repurchase agreements, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

In addition, 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.²³ The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day. 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.

Trading Halts

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.²⁴ 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. 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. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the

²³ Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

²⁴ See NYSE Arca Equities Rule 7.12.

Shares subject to the Exchange’s existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser, as the Reporting Authority, will 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. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3²⁵ under the Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. 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 as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules

²⁵ 17 CFR 240.10A-3.

and applicable federal securities laws.²⁶ The Exchange represents 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.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and certain underlying exchange-traded equity securities (including common stocks, ETFs, ETNs, ETPs, preferred stock, rights, warrants, exchange-traded convertible securities, closed-end funds, MLPs, REITs, BDCs and certain Depositary Receipts) with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁷ The

²⁶ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

²⁷ 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.

Exchange is able to access from FINRA, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company 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.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

Information Bulletin

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 and the Disclosed Portfolio 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.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)²⁸ that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The

²⁸ 15 U.S.C. 78f(b)(5).

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. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, certain underlying exchange-traded equity securities (including common stocks, ETFs, ETNs, ETPs, preferred stock, rights, warrants, exchange-traded convertible securities, closed-end funds, REITs, MLPs, BDCs and certain Depositary Receipts) with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and such securities and financial instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company 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. Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in 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. In addition, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. The Fund's website will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. 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 that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser, on behalf of the Fund, will disclose on the Fund's website the following information regarding each portfolio holding, as applicable to the type of holding: ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website information will be publicly available at no charge.

Moreover, 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. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market

conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, 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. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that primarily holds equity securities and that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-64 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2016-64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post

all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-64 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Robert W. Errett
Deputy Secretary

²⁹ 17 CFR 200.30-3(a)(12).