

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60195; File No. SR-NYSEArca-2009-55)

June 30, 2009

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the Dent Tactical ETF

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 18, 2009, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change 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 following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): the Dent Tactical ETF. The text of the proposed rule change is available on the Exchange’s Web site at [www.nyx.com](http://www.nyx.com), at the Exchange’s principal office, and at the Commission’s Public Reference Room.<sup>3</sup>

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 received on the proposed rule change. The text of those statements may be examined at the places

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Cho, Special Counsel, Division of Trading and Markets, Commission, dated June 30, 2009 (“June 30 E-mail”).

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 the following Managed Fund Shares<sup>4</sup> (“Shares”) under NYSE Arca Equities Rule 8.600: the Dent Tactical ETF (“Fund”).<sup>5</sup> The Shares will be offered by AdvisorShares Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>6</sup>

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<sup>4</sup> 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) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor 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.

<sup>5</sup> The Commission previously approved listing and trading on the Exchange of the following actively managed funds under Rule 8.600. See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (order approving Rule 8.600 and Exchange listing and trading of PowerShares Active AlphaQ Fund, PowerShares Active Alpha Multi-Cap Fund, PowerShares Active Mega-Cap Portfolio and PowerShares Active Low Duration Portfolio); Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); Securities Exchange Act Release No. 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR-NYSEArca-2009-22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF).

<sup>6</sup> The Trust is registered under the 1940 Act. On June 9, 2009, the Trust filed with the Commission Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (“Registration Statement”). The Trust has also filed a Third Amended Application for an Order under Sections 6(c) and 17(b) of the Investment Company Act of 1940 (“1940 Act”) for an exemption from certain provisions of the 1940 Act and rules thereunder (File No. 812-13488). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

According to the Registration Statement, the Fund is a “fund of funds,” which means that the Fund seeks to achieve its investment objective by investing primarily in other exchange-traded funds (“ETFs”) that are registered under 1940 Act and also shares of certain exchange-traded products that are not registered as investment companies under 1940 Act (collectively, the “Underlying ETPs”).<sup>7</sup> Unlike certain of the Underlying ETPs, which may be based on underlying indexes, the Fund will not track or replicate a specific index. The Fund charges its own expenses and also indirectly bears a proportionate share of the Underlying ETPs’ expenses.

Underlying ETPs will be listed on a national securities exchange and such Underlying ETPs may hold non-US issues.

The investment advisor to the Fund is AdvisorShares Investments, LLC (the “Advisor”). The day-to-day portfolio management of the Fund is provided by HS Dent Investment Management, LLC, the sub-advisor to the Fund (“Sub-Advisor”). The Sub-Advisor selects a group of Underlying ETPs for the Fund in which to invest pursuant to an “active” management strategy for asset allocation, security selection and portfolio construction. The Fund will periodically change the composition of its portfolio to best meet its investment objective. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.<sup>8</sup>

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<sup>7</sup> Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600).

<sup>8</sup> The Exchange represents that the Advisor, as the investment advisor of the Fund, and its related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) standards of business conduct that reflect the firm’s/personnel fiduciary

## Description of the Fund

According to the Registration Statement, the Fund's investment objective is long-term growth of capital. The Fund Sub-Advisor seeks to achieve the Fund's investment objective by identifying, through proprietary economic and demographic analysis, the overall trend of the U.S. and global economies, and then implementing investment strategies in asset classes that the Sub-Advisor believes will benefit from these trends. The Sub-Advisor believes its modeling can accurately forecast economic trends such as gross domestic product ("GDP") growth and inflation based on its research concerning consumer spending, consumer debt, consumer savings and investment, and technological innovation. The Sub-Advisor is of the opinion that maximizing investment returns depends on understanding the right balance of asset classes that are favored by different fundamental economic trends and accurately rebalancing the Fund's investments as the trends emerge.

According to the Registration Statement, the Sub-Advisor follows its model to determine how offensive or defensive the Fund portfolio will be, and then selects securities to buy or sell.

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

Offensive holdings are those that the Sub-Advisor anticipates will appreciate in value. Defensive positions are those which the Sub-Advisor anticipates will maintain their value, regardless of market conditions or cycles. According to the Registration Statement, the model is objective and the Sub-Advisor applies little subjective judgment in security selection, retention, or sales decisions.

The securities that comprise the Fund's offensive strategy are selected using the following method: The Sub-Advisor identifies sectors, styles and/or geographic regions it believes are demographically favored based on its research. Using a proprietary selection process, the Sub-Advisor creates a universe of Underlying ETPs<sup>9</sup> that correspond to the favored sectors, styles and/or geographic regions. On a monthly basis, using a proprietary ranking process and objective third party research, the selected Underlying ETPs are ranked by the Sub-Advisor according to their relative strength. The relative strength is gauged by a third party research firm that measures price momentum and similar characteristics in order to determine relative strength. The Sub-Advisor then constructs the Fund portfolio using highly ranked Underlying ETPs that meet a minimum relative strength requirement. The Fund is managed as an allocated fund of funds made up of these highly ranked Underlying ETPs selected by the Sub-Advisor. When there are not sufficient sectors and/or Underlying ETPs that meet the minimum relative strength requirement of the model, the balance of the Portfolio's assets will be allocated to defensive investments such as high quality debt, money market instruments, or other investments as determined by the Sub-Advisor.<sup>10</sup>

While the model is applied monthly, the holdings of the Portfolio will be reallocated at

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<sup>9</sup> See June 30 E-mail, supra, note 3.

<sup>10</sup> Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

the Sub-Advisor's discretion over the course of the month. As a result, the Fund may have a high rate of portfolio turnover.

The Fund and the Underlying ETPs may invest in equity securities. As described in the Registration Statement, equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships. Except for Underlying ETPs that may hold non-US issues, the Fund will not otherwise invest in non-US issues.

The Fund may use futures contracts and related options for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. To the extent the Fund uses futures and/or options on futures, it will do so in accordance with Rule 4.5<sup>11</sup> under the Commodity Exchange Act.<sup>12</sup> According to the Registration Statement, the Fund will reduce the risk that it will be unable to close out a futures contract by only entering into futures contracts that are traded on a national futures exchange regulated by the Commodities Futures Trading Commission.

The Fund may purchase and write put and call options on indices and enter into related closing transactions; may trade put and call options on securities, securities indices and currencies, as the Investment Sub-Advisor determines is appropriate in seeking the Fund's investment objective, and except as restricted by the Fund's investment limitations (as described in the Registration Statement); may enter into repurchase agreements with financial institutions; may use reverse repurchase agreements as part of the Fund's investment strategy; may enter into

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<sup>11</sup> 17 C.F.R. 4.5.

<sup>12</sup> 7 U.S.C. 1 et seq.

swap agreements, including, but not limited to, equity index swaps and interest rate swap agreements; and may make short-term investments in U.S. Government securities. In addition, the Fund may invest up to 15% of its net assets in illiquid securities. For this purpose, “illiquid securities” are securities that the Fund may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the Fund has valued the securities.

The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (i.e., delivery and payment can take place between a month and 120 days after the date of the transaction). The Fund may invest in U.S. Treasury zero-coupon bonds.

As stated in the Registration Statement, it is a fundamental policy of the Fund that it may not, 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) 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.<sup>13</sup> In addition, the Fund may not purchase any securities which would cause 25% or more of its total assets to be invested in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries, provided that 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.<sup>14</sup>

According to the Registration Statement, the Fund will seek to qualify for treatment as a

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<sup>13</sup> This diversification standard is contained in Section 5(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a).

<sup>14</sup> Such fundamental policies may not be changed without the vote of a majority of the outstanding voting securities of the Fund.

Regulated Investment Company (“RIC”) under the Internal Revenue Code.<sup>15</sup>

To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments. The Fund may be invested in these instruments for extended periods, depending on the Sub-Advisor’s assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers’ acceptances, U.S. Government securities, repurchase agreements and bonds that are BBB or higher.

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as “Creation Units.” According to the Registration Statement, the shares of the Fund are “created” at their net asset value (“NAV”) by market makers, large investors and institutions only in block-size Creation Units of 25,000 shares or more. A “creator” enters into an authorized participant agreement (a “Participant Agreement”) with the Fund’s distributor (the “Distributor”) or a DTC participant that has executed a Participant Agreement with the Distributor (an

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<sup>15</sup> According to the Registration Statement, one of several requirements for RIC qualification is that a Fund must receive at least 90% of the Fund’s gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund’s investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership (the “90% Test”). A second requirement for qualification as a RIC is that a Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund’s taxable year: (a) at least 50% of the market value of the Fund’s total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund’s total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership (the “Asset Test”).



“Authorized Participant”), and deposits into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 25,000 shares of the Fund (or multiples thereof). Similarly, shares can only be redeemed in Creation Units, generally 25,000 shares or more, principally in-kind for a portfolio of securities held by the Fund and a specified amount of cash together totaling the NAV of the Creation Unit(s). Shares are not redeemable from the Fund except when aggregated in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form prescribed in the Participant Agreement.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3<sup>16</sup> under the Exchange 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 net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

#### Availability of Information

The Fund’s Web site ([www.advisorshares.com](http://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 Web site 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

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<sup>16</sup> 17 CFR 240.10A-3.

(the “Bid/Ask Price”),<sup>17</sup> 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 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 Web site 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.<sup>18</sup>

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.<sup>19</sup> In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange (“NYSE”) via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund. The Web site information will be publicly available at no charge.

The NAV of the Fund will normally be determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern Time) on each business day.

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<sup>17</sup> The Bid/Ask Price of the Fund is determined using 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.

<sup>18</sup> 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.

<sup>19</sup> See June 30 E-mail, supra, note 3.

Investors can also obtain the Trust’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 are 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 downloaded from the Commission’s Web site at <http://www.sec.gov>. Information regarding market price and trading volume of the Shares is and 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 will be published daily in the financial section of newspapers. 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, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session through the facilities of CTA. 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 to provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

#### 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.<sup>20</sup> Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been

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<sup>20</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

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 comprising the Disclosed Portfolio and/or the financial instruments 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 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. The minimum trading increment for Shares on the Exchange will be \$0.01.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. 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 applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. 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 may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges that are members of ISG.<sup>21</sup> In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (“ETP”) 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 ETP 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 ETP 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 Exchange Act. The

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<sup>21</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange may obtain information from futures exchanges with which the Exchange has entered into a surveillance sharing agreement or that are ISG members. 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.

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 Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>22</sup> 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 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.

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 purposes of the Act.

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 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date 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 the proposed rule change, or

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<sup>22</sup> 15 U.S.C. 78f(b)(5).

- (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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2009-55 on the subject line.

##### Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2009-55. 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 Web site (<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 inspection and copying 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 will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at [www.nyx.com](http://www.nyx.com). 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-2009-55 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.<sup>23</sup>

Elizabeth M. Murphy  
Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).