

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-61697; File No. SR-NYSEArca-2010-04)

March 12, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Relating to the WisdomTree Real Return Fund

I. Introduction

On January 25, 2010, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares (“Shares”) of the WisdomTree Real Return Fund (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on February 23, 2010.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposed Rule Change

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 61519 (February 16, 2010), 75 FR 8164 (“Notice”).

⁴ Managed Fund Shares are defined as securities that (a) represent an interest in a registered investment company organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by the investment company’s investment adviser consistent with the investment company’s investment objectives and policies; (b) are issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. See NYSE Arca Equities Rule 8.600(c)(1).

Fund will be an actively-managed exchange traded fund, and the Shares will be offered by the WisdomTree Trust (“Trust”), a Delaware statutory trust that is registered with the Commission as an investment company.⁵ WisdomTree Asset Management, Inc. (“Adviser”) will be the investment adviser to the Fund and is not affiliated with any broker-dealer. The Mellon Capital Management Corporation (“Sub-Adviser”), which will serve as the sub-adviser for the Fund, is affiliated with multiple broker-dealers and, accordingly, has implemented a “fire wall” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund’s portfolio.⁶ The Bank of New York Mellon will be the administrator, custodian and transfer agent for the Fund, and ALPS Distributors, Inc. will serve as the distributor for the Fund.

The Exchange states that the Shares will be subject to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600(d) applicable to Managed Fund Shares⁷ and that the Shares will comply with Rule 10A-3 under the Act,⁸ as provided by NYSE Arca Equities

⁵ See Trust Registration Statement on Form N-1A filed on October 28, 2009 (File Nos. 333-132380 and 811-21864) (“Registration Statement”).

⁶ See Commentary .07 to NYSE Arca Equities Rule 8.600 (requiring the use of “fire walls” between investment advisers and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to the fund portfolio). The Exchange represents that the Adviser and the Sub-Adviser of the Funds, and their respective related personnel, are subject to Rule 204A-1 under the Investment Advisers Act of 1940 (“Advisers Act”), which generally 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.

⁷ The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value (“NAV”) per share for 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.

⁸ See 17 CFR 240.10A-3.

Rule 5.3.

The Fund will seek to provide investors with total returns that exceed the rate of inflation over long-term investment horizons. To achieve its objective, the Fund intends to invest in a portfolio of inflation-linked securities, such as U.S. Treasury Inflation Protected Securities (“TIPS”) and other investment-grade fixed income securities. The Fund will have targeted exposure to commodities and commodity strategies.

While the Fund intends to invest up to 70% or more of the value of its portfolio in TIPS, the Fund may invest in other types of inflation-linked fixed income securities, such as investment-grade, floating-rate fixed income securities linked to U.S. inflation rates that are issued by the U.S. government, government agencies, or corporations. The Fund may also invest in inflation-linked swaps, securities linked to inflation rates outside the U.S., including securities or instruments linked to rates in emerging market countries, and fixed income securities that are not linked to inflation, such as U.S. government securities. While the Fund intends to invest primarily in investment-grade securities, the Fund may invest up to 10% of its net assets in securities rated “BB” or lower by at least two nationally recognized statistical rating organizations or, if unrated, deemed to be of equivalent quality. The Fund may invest in securities with effective or final maturities of any length and will seek to keep the average effective duration of its portfolio between two and ten years. The Fund may adjust its portfolio holdings or average effective duration based on actual or anticipated changes in interest rates or credit quality.

The Fund also intends to have targeted exposure to commodities across a number of sectors, such as energy, precious metals, and agriculture, primarily through its investments in the

WisdomTree Real Return Investment Portfolio, Inc. (“Subsidiary”),⁹ a wholly-owned subsidiary organized in the Cayman Islands,¹⁰ as well as in commodity-linked instruments on a limited basis. In addition, the Fund and the Subsidiary may invest in swaps on commodities or commodity indexes, commodity-based structured notes, and exchange-traded commodity-based derivative products (collectively, “Commodity-Linked Instruments”). While the Fund will seek exposure to commodity markets, it generally does not expect to invest in commodities directly in the spot market. The Fund represents that investments in Commodity-Linked Instruments must be consistent with the Fund’s investment objective and will not be used to enhance leverage and that neither the Fund nor the Subsidiary will invest in non-U.S. equity securities, except for the Fund’s investment in the shares of the Subsidiary.¹¹

The Fund may invest up to an aggregate amount of 15% of its net assets in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on

⁹ The Fund intends to invest up to 25% of its assets in the Subsidiary. The Subsidiary intends to invest all of its assets in Commodity-Linked Instruments and/or fixed income securities that serve as collateral for its commodity exposure. The Subsidiary’s investments will be consolidated into the Fund’s financial statements, and the Fund’s and Subsidiary’s holdings will be publicly available on a daily basis.

¹⁰ The Exchange states that the Subsidiary is subject to the same investment restrictions as the Fund and will operate in the same manner as the Fund with regard to applicable compliance policies and procedures (other than investments in Commodity-Linked Instruments). Although the Subsidiary is not registered as an investment company under the Investment Company Act of 1940 (“1940 Act”), the Adviser will manage both the Fund and the Subsidiary, and the Fund’s Board of Trustees will oversee the operation of the Fund and its investment in the Subsidiary. Because the Subsidiary’s investments are consolidated into those of the Fund, the Fund’s combined holdings are required to comply with the 1940 Act. In addition, the Fund is the sole shareholder of the Subsidiary and does not expect shares of the Subsidiary to be offered or sold to other investors.

¹¹ The Fund intends to maintain the level of diversification necessary to qualify as a regulated investment company (“RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.

resale and other instruments that lack readily available markets.¹² The liquidity of securities purchased by the Fund which are eligible for resale pursuant to Rule 144A will be monitored by the Fund on an ongoing basis. In the event that such a security is deemed to be no longer liquid, the Fund's holdings will be reviewed to determine what action, if any, is required to ensure that the retention of such security does not result in the Fund having more than 15% of its assets invested in illiquid or not readily marketable securities.

Additional information regarding the Trust, the Fund, the Shares, the investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.¹³

III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade the Shares is consistent with the requirements of Section 6 of the Act¹⁴ and the rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

¹² A security is deemed "illiquid" if it can not be sold or disposed of in the ordinary course of business within seven days at a price that approximates fair market value.

¹³ See supra notes 3 and 5.

¹⁴ 15 U.S.C. 78f.

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b)(5).

cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁷ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association's high-speed line, and the Portfolio Indicative Value ("PIV") will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the Fund will make available on its Web site on each business day before the commencement of trading in Shares in the Core Trading Session the Disclosed Portfolio¹⁸ that will form the basis for the calculation of the NAV, which will be determined at the end of the business day. The Fund's Web site will also include additional quantitative information updated on a daily basis relating to NAV. Information regarding the market price and trading volume of the Shares will

¹⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁸ The Adviser 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. The Commission notes that the Reporting Authority providing the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio. See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information will be published daily in the financial section of newspapers.

The Commission further believes that the proposal 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 that the NAV per share for 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.¹⁹ Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated daily to all market participants at the same time, the Exchange will halt trading in such series until such time as the NAV or the Disclosed Portfolio is available to all market participants.²⁰ Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.²¹ The Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and, accordingly, has implemented a "fire wall" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. Further, the Commission notes that the Reporting

¹⁹ See NYSE Arca Equities Rule 8.600(d)(1)(B).

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

²¹ Id. Trading in the Shares may also 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.

Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of each of the portfolios.²²

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.
- (2) The Exchange's surveillance 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.
- (3) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares and that Shares are not individually redeemable; (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently

²² See supra note 18.

with the confirmation of a transaction; and (f) trading information.

- (4) The Fund will be in compliance with Rule 10A-3 under the Act.²³
- (5) The Fund and the Subsidiary will not invest in non-U.S. equity securities, except that the Fund will invest in shares issued by the Subsidiary.
- (6) The Fund's investments in Commodity-Linked Instruments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁴ for approving the proposal prior to the thirtieth day after the date of publication of the Notice in the Federal Register. The Commission notes that it has approved the listing and trading on the Exchange of shares of other actively managed exchange-traded funds based on a portfolio of

²³ See supra note 8.

²⁴ 15 U.S.C. 78s(b)(2).

securities, the characteristics of which are similar to those to be invested by the Fund.²⁵ The Commission also notes that it has not received any comments regarding this proposal. The Commission believes that the proposal to list and trade the Shares of the Fund do not raise any novel regulatory issues and accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for Managed Fund Shares.

²⁵ See, e.g., Securities Exchange Act Release Nos. 57514 (March 17, 2008), 73 FR 15230 (March 21, 2008) (SR-Amex-2008-02) (approving the listing and trading of shares of the Bear Stearns Current Yield Fund); 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (approving the listing and trading of shares of twelve actively-managed funds of the WisdomTree Trust); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (approving the listing and trading of shares of five actively-managed fixed income funds of the PIMCO ETF Trust); and 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR-NYSEArca-2009-114) (approving the listing and trading of shares of two actively-managed funds of the Grail Advisors ETF Trust).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NYSEArca-2010-04) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon
Deputy Secretary

²⁶ 15 U.S.C. 78s(b)(1).

²⁷ 17 CFR 200.30-3(a)(12).