

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64643; File No. SR-NYSEArca-2011-21)

June 10, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade the WisdomTree Global Real Return Fund

I. Introduction

On April 20, 2011, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade the shares (“Shares”) of the WisdomTree Global Real Return Fund (“Fund”) under NYSE Arca Equities Rule 8.600.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on May 10, 2011.<sup>4</sup> The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600. The Fund will be an actively managed exchange-traded fund that is registered with the

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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> The Fund was formerly known as the “WisdomTree Real Return Fund.” See Securities Exchange Act Release No. 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR-NYSEArca-2010-04) (approving the listing and trading of the WisdomTree Real Return Fund) (“March 12, 2010 Order”). The Fund Shares have not yet been listed and have not commenced trading on the Exchange because the Fund seeks to make certain changes to its investment strategy that are not reflected in the March 12, 2010 Order. The Exchange seeks to propose the listing and trading of Shares of the Fund based on this new investment strategy.

<sup>4</sup> See Securities Exchange Act Release No. 64411 (May 5, 2011), 76 FR 27127 (“Notice”).

Commission as an investment company.<sup>5</sup> The Shares will be offered by the WisdomTree Trust (“Trust”), a Delaware statutory trust established on December 15, 2005. WisdomTree Asset Management, Inc. (“Adviser”), which will be the investment adviser to the Fund, is not affiliated with any broker-dealer. Mellon Capital Management Corporation (“Sub-Adviser”), which will serve as the sub-adviser for the Fund,<sup>6</sup> 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.<sup>7</sup> 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 Fund will seek total returns that exceed the rate of inflation over long-term

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<sup>5</sup> See Post Effective Amendment No. 43 to the Registration Statement on Form N-1A for the Trust filed with the Securities and Exchange Commission on February 4, 2011 (File Nos. 333-132380 and 811-21864) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812-13458). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, the Trust’s application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

<sup>6</sup> The Sub-Adviser will be responsible for the day-to-day management of the Fund and, as such, will typically make all decisions with respect to portfolio holdings. The Adviser will have ongoing oversight responsibility.

<sup>7</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, such adviser and/or sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.

investment horizons. To achieve its objective, the Fund will invest in Fixed Income Securities<sup>8</sup> and other instruments designed to provide protection against inflation. The Fund will be actively managed and will have targeted exposure to commodities and commodity strategies. Using this approach, the Fund will seek to provide investors with both inflation protection and income.

The Fund intends to invest at least 70% of its net assets in Fixed Income Securities tied to U.S. inflation rates, such as U.S. Treasury Inflation Protected Securities (“TIPS”), as well as inflation-linked Fixed Income Securities tied to non-U.S. inflation rates. The Fund’s investments outside the United States will focus on inflation-linked securities from countries that are leading exporters of global commodities, such as Australia, Brazil, Canada, Chile, and South Africa. The Fund will not invest more than 35% of its net assets in Fixed Income Securities of issuers in emerging markets. The Fund may invest in Fixed Income Securities that are not linked to inflation, such as U.S. or non-U.S. government bonds, as well as Fixed Income Securities that pay variable or floating rates.

The Fund expects that it will have at least 70% of its assets invested in investment grade securities, and no more than 30% of its assets invested in non-investment grade securities. Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund’s investments in investment grade and non-investment grade Fixed Income Securities will change from time-to-time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets

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<sup>8</sup> For these purposes, Fixed Income Securities include bonds, notes, or other debt obligations, such as government or corporate bonds, denominated in U.S. dollars or non-U.S. currencies.

in securities rated BB or below by Moody's, or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser and Sub-Adviser to be of comparable quality.<sup>9</sup>

While the Fund intends to focus its investments in Fixed Income Securities on bonds and other obligations of U.S. and non-U.S. governments and agencies, the Fund may invest up to 20% of its net assets in corporate bonds.<sup>10</sup> 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 2 and 8 years. The Fund's actual portfolio duration may be longer or shorter depending on market conditions.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government or any non-U.S. government or their respective agencies and instrumentalities, or government-sponsored enterprises). Although the Fund intends to invest in a variety of securities and instruments, the

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<sup>9</sup> In determining whether a security is of "comparable quality," the Adviser and Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities.

<sup>10</sup> The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have \$200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. However, the Fund may invest up to 5% of its net assets in corporate bonds with less than \$200 million par amount outstanding if (i) the Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), and (ii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

Fund will be considered non-diversified, which means that it may invest more of its assets in the securities of a smaller number of issuers than if it were a diversified Fund. In addition, the Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended, and no portfolio security held by the Fund (other than U.S. government securities and non-U.S. government securities) will represent more than 30% of the weight of the Fund, and the five highest weighted portfolio securities of the Fund (other than U.S. government securities and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund.

The Fund intends to invest in Money Market Securities<sup>11</sup> in order to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses and to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. All Money Market Securities acquired by the Fund will be rated investment grade. The Fund does not intend to invest in any unrated Money Market Securities.

The Fund may use derivative instruments as part of its investment strategies. The Fund expects that no more than 30% of the value of the Fund's net assets will be invested in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund's use of derivative instruments will be collateralized or otherwise backed by investments in short-term, high-quality U.S. money market securities. The Fund may engage in foreign currency transactions and may invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and

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<sup>11</sup> For these purposes, Money Market Securities include: Short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies, and instrumentalities; repurchase agreements backed by U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions.

bankers acceptances denominated in a specified non-U.S. currency. The Fund also may enter into forward currency contracts in order to “lock in” the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.<sup>12</sup> In addition, the Fund may invest in the securities of other investment companies (including money market funds and ETFs) and up to an aggregate amount of 15% of its net assets in illiquid securities, including securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets.

The Fund intends to have targeted exposure to commodities across a number of sectors, such as energy, precious metals, and agriculture, primarily through its investments in a wholly-owned subsidiary organized in the Cayman Islands (“Subsidiary”). The Subsidiary is wholly-owned and controlled by the Fund, and its investments will be consolidated into the Fund’s financial statements. The Fund’s investment in the Subsidiary may not exceed 25% of the Fund’s total assets at the end of each fiscal quarter. The Subsidiary’s shares will be offered only to the Fund, and the Fund will not sell shares of the Subsidiary to other investors. The Fund will not invest in any non-U.S. equity securities (other than shares of the Subsidiary). The Subsidiary will comply with the 1940 Act and will have essentially the same compliance policies and procedures as the Fund, except that, unlike the Fund, the Subsidiary may invest without

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<sup>12</sup> The Fund and the Subsidiary (as defined herein) will invest only in currencies, and instruments that provide exposure to such currencies, that have significant foreign exchange turnover and are included in the Bank for International Settlements Triennial Central Bank Survey, December 2007 (“BIS Survey”). Specifically, the Fund and Subsidiary may invest in currencies, and instruments that provide exposure to such currencies, selected from the top 40 currencies (as measured by percentage share of average daily turnover for the applicable month and year) included in the BIS Survey.

limitation in commodity-linked investments.<sup>13</sup> The Subsidiary will otherwise operate in essentially the same manner as the Fund. Because the Subsidiary's investments are consolidated into the Fund's, the Fund's combined holdings (including the investments in the Subsidiary) must comply with the 1940 Act.

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.<sup>14</sup>

### III. Discussion and Commission's Findings

After careful review, the Commission finds that NYSE Arca's proposal to list and trade

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<sup>13</sup> The Subsidiary will achieve exposure to commodities through investments in a combination of listed commodity futures, commodity index swaps, and structured notes that provide commodity returns. The Subsidiary's investments will be subject to applicable requirements of the Commodity Exchange Act and rules thereunder, and to rules of the applicable U.S. futures exchanges. The Subsidiary's investments in commodity futures contracts will be limited by the application of position limits imposed by the Commodity Futures Trading Commission and U.S. futures exchanges intended to prevent undue influence on prices by a single trader or group of affiliated traders. The Adviser has represented that the Subsidiary intends to invest only in listed futures contracts that are heavily traded and are based on some of the world's most liquid and actively-traded commodities. The Subsidiary intends to invest in or have exposure to the following listed futures contracts: Cocoa; coffee; corn; cotton; light crude oil; gold; heating oil; high grade copper; lean hogs; live cattle; natural gas; silver; soybeans; sugar; unleaded gas; and wheat. In addition, the Subsidiary intends to enter into over-the-counter swap transactions only with respect to transactions based on the commodities described herein or on major commodity indexes or indicators, such as the S&P GSCI Total Return Index, Dow Jones-UBS Commodity Returns Index or the AFT Commodity Trends Indicator. The Subsidiary also may invest in commodity-linked notes, which will be limited to notes providing exposure to the commodities described herein or any commodity index.

<sup>14</sup> See supra notes 4 and 5.

the Shares of the Fund is consistent with the requirements of Section 6 of the Act<sup>15</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> 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 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,<sup>18</sup> 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 high-speed line, and the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), 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 Trust will disclose on its website on each business day

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<sup>15</sup> 15 U.S.C. 78f.

<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).



before the commencement of trading in Shares in the Core Trading Session the Disclosed Portfolio,<sup>19</sup> as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the calculation of the net asset value (“NAV”), which will be determined at the end of each business day.<sup>20</sup> The Fund’s website 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 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. In addition, the intra-day, executable price quotations and/or end-of-day prices on futures contracts, commodities, and other Fund investments are available from major broker-dealer firms and/or through subscription services, such as Bloomberg and Thomson Reuters. The Fund’s website will also include a form of the prospectus, information relating to NAV, and other quantitative and trading information.

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.<sup>21</sup> In addition, the Exchange will halt trading in the

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<sup>19</sup> The Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name or description 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>20</sup> The NAV of the Fund’s Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange, generally 4:00 p.m. Eastern time.

<sup>21</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares to the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>22</sup> 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.<sup>23</sup> Further, the Commission notes that the Reporting 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

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<sup>22</sup> With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds 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.

<sup>23</sup> See supra note 7 and accompanying text. With respect to the Fund, the Exchange represents that the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Investment Advisers Act of 1940 (“Advisers Act”) relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

components of the portfolio.<sup>24</sup>

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

- (1) The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (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 Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.

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<sup>24</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

- (4) For initial and/or continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.<sup>25</sup>
- (5) The Fund will not invest in non-U.S. equity securities (other than shares of the Subsidiary).
- (6) The Fund's investments in derivative instruments will be consistent with the Fund's investment objective and will not be used to enhance leverage.
- (7) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

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 Section 6(b)(5) of the Act<sup>26</sup> and the rules and regulations thereunder applicable to a national securities exchange.

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<sup>25</sup> See 17 CFR 240.10A-3.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NYSEArca-2011-21) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>27</sup> 15 U.S.C. 78s(b)(1).

<sup>28</sup> 17 CFR 200.30-3(a)(12).