

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-62502; File No. SR-NYSEArca-2010-57)

July 15, 2010

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Accelerated Approval of Proposed Rule Change Regarding Listing and Trading Shares of AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF

On June 16, 2010, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the “Fund”) under NYSE Arca Equities Rule 8.600 (Managed Fund Shares). The proposed rule change was published in the Federal Register on June 29, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change on an accelerated basis.

I. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares. The Shares will be offered by AdvisorShares Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 62344 (June 21, 2010), 75 FR 37498 (“Notice”).

company.⁴ The investment advisor to the ADR Fund is AdvisorShares Investments, LLC (the “Advisor”). WCM Investment Management (“WCM”) is the sub-advisor (“Sub-Advisor”) to the ADR Fund and the portfolio manager.⁵ The Sub-Advisor selects securities for the Fund in which to invest pursuant to an “active” management strategy for security selection and portfolio construction. The Fund’s investment objective is long-term capital appreciation above international benchmarks such as the BNY Mellon Classic ADR Index, the Fund’s primary benchmark, and the MSCI EAFE Index, the Fund’s secondary benchmark. WCM seeks to achieve the Fund’s investment objective by selecting a portfolio of U.S. traded securities of non-U.S. organizations included in the BNY Mellon Classic ADR Index. The BNY Mellon Classic ADR Index predominantly includes American Depositary Receipts (“ADRs”) and in addition includes other Depositary Receipts (“DRs”), which include Global Depositary Receipts (“GDRs”), Euro Depositary Receipts (“Euro DRs”) and New York Shares (“NYSs”).⁶

⁴ The Trust is registered under the 1940 Act. On April 23, 2010, the Trust filed with the Commission Post-Effective Amendment No. 5 to 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) (the “Registration Statement”). The Trust has also filed an Amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-13677 dated May 14, 2010) (“Exemptive Application”).

⁵ The Exchange has represented that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.

⁶ According to the Registration Statement, DRs, which include ADRs, GDRs, Euro DRs and NYSSs, are negotiable securities that generally represent a non-U.S. company's publicly traded equity or debt. Depositary Receipts may be purchased in the U.S. secondary trading market. They may trade freely, just like any other security, either on an exchange or in the over-the-counter market. Although typically denominated in U.S. dollars, Depositary Receipts can also be denominated in Euros. Depositary Receipts can trade on all U.S. stock exchanges as well as on many European stock exchanges.

The Exchange states that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 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 Rule 5.3. Additionally, among other things, the composition of the Fund's portfolio, on a continual basis, will be subject to the following: component stocks that in the aggregate account for at least 90% of the weight of the Fund's portfolio each shall have a minimum global market value of at least \$100 million; component stocks that in the aggregate account for at least 70% of the weight of the Fund's portfolio each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months; a minimum of 20 component stocks of which the most heavily weighted component stock shall not exceed 25% of the weight of the portfolio, and the five most heavily weighted component stocks shall not exceed 60% of the weight of the portfolio; and each non-U.S. equity security underlying ADRs held by the Fund will be listed and traded on an exchange that has last-sale reporting. Additional information regarding the Trust, the Fund, the Shares, the Fund's investment objectives, strategies, policies, and restrictions, risks, fees and expenses, creation and redemption procedures, portfolio holdings and policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and Registration Statement, as applicable.⁹

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 will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. See Notice, supra note 3.

⁸ 17 CFR 240.10A-3.

⁹ See supra notes 3 and 4.

II. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act¹⁰ and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission 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,¹³ 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 ("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 Portfolio that will form the basis for the

¹⁰ 15 U.S.C. 78f.

¹¹ 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).

¹² 17 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

calculation of the NAV, which will be determined at the end of the business day.¹⁴ The Fund's Web site will also include additional quantitative information updated on a daily basis relating to, daily trading volume, the prior business day's reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),¹⁵ and a calculation of the premium and discount of the Bid/Ask Price against the NAV and 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. Information regarding the market price and 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 for the Shares will be published daily in the financial sections 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 will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.¹⁶ 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

¹⁴ 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.

¹⁵ The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

¹⁶ See NYSE Arca Equities Rule 8.600(d)(1)(B).

halt trading in the Shares until such information is available to all market participants.¹⁷ Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the disruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.¹⁸ The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. However, 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 components of each of the portfolios.¹⁹

The Exchange has deemed the Shares to be 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.

¹⁷ See NYSE Arca Equities Rule 8.600(d)(2)(D).

¹⁸ 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.

¹⁹ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

- (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 in Creation Unit aggregations 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 with the confirmation of a transaction; and (f) trading information.
- (4) The Funds will be in compliance with Rule 10A-3 under the Act.
- (5) The Funds will not invest in non-U.S. equity securities outside of U.S. markets.

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.

III. Accelerated Approval

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ 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 securities, the characteristics of which are similar to those to be invested by the Fund.²¹ The Commission also notes that it has not received any comments regarding this proposal, nor did it receive any comments on a previously filed proposed rule change relating to the Fund.²² 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.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ See, e.g., Securities Exchange Act Release Nos. 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) and 60975 (November 10, 2009), 74 FR 59590 (November 18, 2009) (SR-NYSEArca-2009-83) (approving the listing and trading of shares of the Grail American Beacon International Equity ETF).

²² The Exchange previously filed a proposed rule change relating to listing on the Exchange of the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF in File No. SR-NYSEArca-2010-07. See Securities Exchange Act Release No. 61642 (March 3, 2010), 75 FR 11216 (March 10, 2010). No comments were received on the proposal. The Exchange withdrew the proposed rule change on April 9, 2010. See Securities Exchange Act Release No. 61953 (April 21, 2010), 75 FR 22169 (April 27, 2010).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-NYSEArca-2010-57), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Florence E. Harmon
Deputy Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).