

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63737; File No. SR-NYSEArca-2010-107)

January 19, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of the AdvisorShares Active Bear ETF

I. Introduction

On November 23, 2010, NYSE Arca, Inc. (“Exchange”) 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 Active Bear ETF (the “Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on December 13, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. 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 and trading of Managed Fund Shares. 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.⁴ The investment advisor to the Fund is AdvisorShares Investments, LLC (the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63447 (December 7, 2010), 75 FR 77681 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On September 22, 2010, the Trust filed with the Commission Post-Effective Amendment No. 12 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

“Advisor”). Ranger Alternative Management, L.P. is the sub-advisor (“Sub-Advisor”) to the Fund and the portfolio manager. Foreside Fund Services LLC is the distributor for the Fund. The Bank of New York Mellon Corporation is the administrator, custodian, transfer agent and fund accounting agent for the Fund.

The Fund’s investment objective is to seek capital appreciation through short sales of domestically-traded equity securities. The Sub-Advisor seeks to achieve that objective by short selling a portfolio of liquid mid- and large-cap U.S. exchange-traded equity securities, exchange-traded funds (“ETFs”) registered pursuant to the 1940 Act and exchange-traded products (“ETPs”), including exchange-traded notes (“ETNs”).⁵ The Fund generally targets composition of 20-50 equity short positions, with an average individual position size generally ranging between 2-7% of the aggregate portfolio exposure. ETPs may be used to gain exposure in instances when the Sub-Advisor has a more bearish posture with respect to the broad market and will typically range between 10-15% of the Fund’s portfolio. ETFs registered pursuant to the 1940 Act or other exchange-traded products not registered pursuant to the 1940 Act will be utilized to manage exposure to broad indexes or certain sectors. The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, for extended periods if desired, in high-quality short-term debt securities and money market instruments, depending on the Sub-Advisor’s assessment of market conditions.

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 28, 2010). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

⁵ The Fund may sell short only equity securities traded in the U.S. on registered exchanges. The Fund will not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the Securities Act of 1933.

The Exchange represents that the Shares will be subject to NYSE Arca Equities Rule 8.600, which includes the initial and continued listing criteria applicable to Managed Fund Shares,⁶ and will comply with Rule 10A-3 under the Act,⁷ as provided by NYSE Arca Equities Rule 5.3. 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 and in the Notice.⁸

III. 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 Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹¹ 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.

⁶ 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.

⁷ 17 CFR 240.10A-3.

⁸ See Notice and Registration Statement, supra notes 3 and 4, respectively.

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

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,¹² 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. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2)¹³ that will form the basis for the Fund's calculation of NAV at the end of the business day.¹⁴ The website for the Fund (<http://www.advisorshares.com>) will contain the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. The PIV will be based upon the current value for the components of the Disclosed Portfolio, and will be updated and disseminated by one or more major market data

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ "Disclosed Portfolio" is defined as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. The Disclosed Portfolio will disclose the following information: ticker symbol (if applicable), name or description of security or investment, number of shares or dollar value of investments held in the portfolio, and percentage weighting of the security or investment in the portfolio.

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.

vendors at least every 15 seconds during the Core Trading Session on the Exchange.

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.

The Commission further believes that the proposal to list and trade the Shares 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 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.¹⁵ If the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants.¹⁶ In addition, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the PIV occurs; if the interruption to the dissemination of the PIV 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.¹⁷

The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a

¹⁵ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁶ See NYSE Arca Equities Rule 8.600(d)(2)(D).

¹⁷ See 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, for example: (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.

broker-dealer. In the event the Adviser or the Sub-Adviser become affiliated with a broker-dealer, or any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio.¹⁸ 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 components of the portfolio.¹⁹

The Exchange has represented that the Shares are deemed 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 has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (3) 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.
- (4) 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

¹⁸ See also Commentary .06 to NYSE Arca Equities Rule 8.600.

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

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.

- (5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.
- (6) The Fund may sell short only equity securities traded in the U.S. on registered exchanges.
- (7) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This 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 Act²⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2010-107), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Elizabeth M. Murphy
Secretary

²² 17 CFR 200.30-3(a)(12).