

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65468; File No. SR-NYSEArca-2011-51)

October 3, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade Managed Fund Shares of TrimTabs Float Shrink ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On July 29, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of TrimTabs Float Shrink ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on August 18, 2011.³ The Commission received no comments on the proposal [CONFIRM]. 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 of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. 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 adviser to the Fund is AdvisorShares

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 65126 (August 12, 2011), 76 FR 51442 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On January 19, 2011, 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-

Investments, LLC (“Adviser”). Trim Tabs Asset Management, LLC (“TrimTabs” or “Sub-Adviser”) is the Fund’s sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund’s Shares. The Exchange states that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.⁵

Description of the Fund

The Fund is an actively-managed exchange-traded fund that seeks to achieve its investment objective primarily by investing in the broad U.S. equity market, as represented by the Russell 3000® Index (“Index”). The Fund seeks to achieve this goal by investing in stocks with liquidity and fundamental characteristics that are historically associated with superior long-term performance. The Sub-Adviser designed the following quantitative stock selection rules to make allocation decisions and to protect against dramatic over or under weighting of individual securities in the Fund’s portfolio.

The Sub-Adviser will rank stocks in the Index based on the following criteria:

- I. The decrease in their outstanding shares over approximately the past 120 days (“float shrink”);

157876 and 811-22110) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677) (“Exemptive Order”).

⁵ 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, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

- II. The increase in free cash flow (the money available to the company that is not used to pay for its daily operations) over approximately the past 120 days; and
- III. The decrease in leverage over approximately the past 120 days. Leverage is measured as the ratio of total liabilities to total assets. The Sub-Adviser will use the relative decrease in leverage, rather than amount of leverage itself, as a criterion because the degree of leverage varies across industries.

The top decile of each respective ranking will consist of the stocks of the companies with (I) the strongest reduction in shares outstanding, (II) the strongest growth in free cash flow, and (III) the largest decrease in leverage, respectively.

Stock Selection Algorithm

The Sub-Adviser will use an algorithm to give a relative weight to the three decile rankings, combining them in a single ranking (combined ranking). The algorithm will place a higher weight on the float shrink ranking, followed by the free cash flow ranking, followed by the leverage ranking. The Fund, under normal circumstances,⁶ will invest in 80 to 120 stocks from among the top 10% of stocks in the combined ranking. The Sub-Adviser's investment process is quantitative. The Sub-Adviser designed the following stock selection rules, which involve liquidity, weighting, rebalancing, and trading considerations:

Liquidity Screening

Before trading, the Fund will estimate the liquidity impact of its suggested trades.

Specifically, the Fund will avoid stocks whose average trading volume over the past 30 days

⁶ The term "under normal market circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

would be less than 50% of the size of the Fund's proposed trades. As a result, the Fund will not invest in stocks that meet its investment criteria in terms of float shrink, free cash flow growth, and leverage if their trading volume is below such levels. As such, the Fund will not invest in stocks that it deems to be illiquid.

Weighting and Sector Allocation

Although the Fund initially will invest an equal dollar amount in the stocks that meet its investment criteria, the Fund is not market capitalization weighted. Thus, the Fund will overweight small-cap stocks and mid-cap stocks relative to traditional, market cap weighted indices.⁷

The relative weights of the sectors in the Fund may vary significantly from those of traditional, market cap weighted indices. Stocks with favorable liquidity characteristics may be concentrated in certain sectors. Sector concentration might increase the Fund's volatility over the short term. The Fund will not correct these sector effects because the Sub-Adviser's research shows that historically they are a source of long-term outperformance.

Other Investments

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in short-term, high-quality debt securities and money market instruments. The Fund may invest in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates

⁷ Mid-sized companies may be more volatile than large-capitalization companies, and returns on investments in stocks of mid-sized companies could trail the returns on investments in stocks of larger or smaller companies. Stock prices of small capitalization companies may be more volatile than those of larger companies and, therefore, the Fund's Share price may be more volatile than those of funds that invest a larger percentage of their assets in stocks issued by larger-capitalization companies.

of deposit, bankers' acceptances, U.S. Government securities, including U.S. Treasury zero-coupon bonds, repurchase and reverse repurchase agreements,⁸ and bonds that are BBB or higher.

The Fund will seek to qualify for treatment as a Regulated Investment Company under Subchapter M of the Internal Revenue Code. The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) 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. In addition, the Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries (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). The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

Pursuant to the terms of the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not

⁸ The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

purchase illiquid securities. In addition, the Fund will not invest in non-U.S.-registered equity securities, loan participation agreements, and Rule 144A securities.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and the Registration Statement, as applicable.⁹

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 Act 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 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.

⁹ See Notice and Registration Statement, supra notes 3 and 4, respectively.

¹⁰ 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).

¹¹ 17 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. In addition, 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 on the Exchange. 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), that will form the basis for the Fund's calculation of the net asset value ("NAV") at the end of the business day.¹³ The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the Exchange (normally 4:00 p.m. Eastern Time). In addition, 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, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The intra-day, closing, and settlement prices of the portfolio securities are also readily available from the national securities exchanges trading such

¹² 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹³ On a daily basis, the Adviser will disclose on the Fund's website 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 website information will be publicly available at no charge.

securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's website will also include a form of the prospectus for the Fund, information relating to NAV, and other quantitative and trading information.

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 Commission notes that the Exchange will obtain a representation from the issuer of the Shares 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.¹⁴ In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁵ The Exchange will consider the suspension of trading in or removal from listing of the Shares if the Portfolio Indicative Value is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.¹⁶ The Exchange represents that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.¹⁷ The

¹⁴ See NYSE Arca Equities Rule 8.600(d)(1)(B).

¹⁵ 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 Fund. Trading in Shares of the Fund 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.

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

¹⁷ See supra note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (“Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the 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

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.¹⁸

The Exchange further 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 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 Equity Trading Permit ("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

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.

¹⁸ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

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 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.

- (5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act,¹⁹ as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund will not invest in non-U.S. equity securities, loan participation agreements, and Rule 144A securities. In addition, pursuant to the terms of the Exemptive Order, the Fund will not invest in options contracts, futures contracts, or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not purchase illiquid securities.
- (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.

¹⁹ See 17 CFR 240.10A-3.

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 proposed rule change (SR-NYSEArca-2011-51) 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

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).