

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67559; File No. SR-NYSEArca-2012-57)

August 1, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of QAM Equity Hedge ETF under NYSE Arca Equities Rule 8.600

I. Introduction

On June 1, 2012, 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 the QAM Equity Hedge ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the Federal Register on June 19, 2012.³ The Commission received no comments on the proposal. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 67196 (June 13, 2012), 77 FR 36591 (“Notice”).

⁴ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On September 16, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”)

AdvisorShares Investments, LLC (“Adviser”). Commerce Asset Management serves as investment sub-adviser to the Fund (“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 Bank of New York Mellon Corporation serves as administrator, custodian, and transfer agent for the Fund. The Exchange represents that, while the Adviser is not affiliated with a broker-dealer, the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.⁵

Principal Investment Strategies

The Fund seeks investment results that exceed the risk adjusted performance of approximately 50% of the long/short equity hedge fund universe as defined by the HFRI Equity Hedge (Total) Index (“HFRI Index”) constituents.⁶ The Fund is a “fund of funds” that seeks to achieve its investment objective, under normal circumstances,⁷ by investing at least 60% of its

and under the 1940 Act relating to the Fund (File Nos. 333-157876 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. 28822 (July 20, 2009) (File No. 812-13488).

⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that in the event (a) the Adviser or 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.

⁶ The HFRI Index contains more than 2,400 funds. Instead of the Fund having an investment objective to outperform the HFRI Index, the Fund’s investment objective is to outperform 50% of the constituents in the HFRI Index.

⁷ The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the equity 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

portfolio in both long and short positions in exchange-traded funds (“ETFs”)⁸ and exchange-traded notes (“ETNs”)⁹ that offer diversified exposure to global regions, countries, investment styles (*i.e.*, value, growth), sectors, and industries, as well as exchange-traded currency and commodity trusts (collectively, with ETFs and ETNs, “Underlying ETPs”),¹⁰ including Underlying ETPs that invest in short duration debt, cash, other cash equivalents, and other highly liquid instruments based on the Sub-Adviser’s current analysis. The Sub-Adviser seeks to achieve the Fund’s investment objective by taking long and short positions in Underlying ETPs that the Sub-Adviser believes, in the aggregate, will track the performance of a selected universe of long/short equity hedge funds.¹¹ The Underlying ETPs in which the Fund will invest will primarily be index-based ETFs that hold substantially all of their assets in securities that offer diversified exposure to global regions, countries, investment styles, sectors, and industries.

In managing the Fund’s portfolio, among other proprietary analytics, the Sub-Adviser

God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

⁸ For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 8.100 (Portfolio Depositary Receipts), and 8.600 (Managed Fund Shares).

⁹ For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the Securities Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

¹⁰ Underlying ETPs include, in addition to ETFs and ETNs, the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges.

¹¹ Long/short equity hedge funds typically buy stocks, ETFs, ETNs, or currencies that the hedge fund managers expect will appreciate, and concurrently either sell short stocks, ETFs, ETNs, or currencies that the hedge fund managers expect will decline in value or to hedge market or sector exposures.

will utilize Markov Processes International, LLC's Dynamic Style Analysis ("DSA") patented hedge fund analysis software to help select the Fund's investments and determine the allocation among such investments. The Sub-Adviser will identify approximately 50 market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. The Sub-Adviser will use DSA and other proprietary analytics to define and track the various market factors and relative exposures and to adjust the Fund's portfolio as necessary. At any given time, such market factors may include country exposure, sector exposure, industry exposure, and currency exposure. In seeking to achieve its investment objective, the Fund will seek to remain invested at all times in securities or derivatives (as described below) that provide the desired exposures to market factors.

The Fund's portfolio typically will consist of up to 50 Underlying ETPs and other securities, as described below. Under normal circumstances, the Fund's largest or maximum investment in any single issuer will range between 5% and 10% of the Fund's portfolio.

The Fund, through its investment in Underlying ETPs, may invest in: (i) closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges; (ii) equity securities of foreign issuers, including the securities of foreign issuers in emerging countries;¹² and (iii) shares of real estate investment trusts (REITs), which are pooled investment vehicles which invest primarily in real

¹² The Exchange states that emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization. The risks of investing in these markets are similar to the risks of international investing in general, although the risks are greater in emerging and developing markets. Countries with emerging or developing securities markets tend to have economic structures that are less stable than countries with developed securities markets, because their economies may be based on only a few industries, and their securities markets may trade a small number of securities. Prices on these exchanges tend to be volatile, and securities in these countries historically have offered greater potential for gain (as well as loss) than securities of companies located in developed countries.

estate or real estate-related loans.

Other Investment Practices and Strategies

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. Debt securities and money market instruments include shares of mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, and bonds that are BBB or higher.

Under normal circumstances, the Fund may hold up to 40% of its portfolio in other investments. For example, on a day-to-day basis, the Fund may hold money market instruments, cash or cash equivalents, and/or Underlying ETPs that invest in these and other highly liquid instruments, to collateralize its derivative positions.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. Treasury zero-coupon bonds. These securities are U.S. Treasury bonds which have been stripped of their unmatured interest coupons, the coupons themselves, and receipts or certificates representing interests in such stripped debt obligations and coupons. Interest is not paid in cash during the term of these securities, but is accrued and paid at maturity.

The Fund or an Underlying ETP may invest in equity securities, which represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

The Fund or an Underlying ETP may invest in American Depositary Receipts ("ADRs"),

as well as Global Depositary Receipts (“GDRs,” and together with ADRs, “Depositary Receipts”), which are certificates evidencing ownership of shares of a foreign issuer. Depositary Receipts will be sponsored. These certificates are issued by depositary banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer’s home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Depositary Receipts are alternatives to directly purchasing the underlying foreign securities in their national markets and currencies. However, Depositary Receipts continue to be subject to many of the risks associated with investing directly in foreign securities.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. government securities. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. U.S. Treasury bills have initial maturities of one-year or less; U.S. Treasury notes have initial maturities of one to ten years; and U.S. Treasury bonds generally have initial maturities of greater than ten years. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association (Ginnie Mae), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the

Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation (Farmer Mac).

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. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.

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. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.

While the Fund may invest up to 40% of its total assets in put and call options on indices (and enter into related closing transactions), exchange-listed futures contracts, and options on futures contracts, the Adviser expects that, under normal market conditions, the Fund will invest no more than 15% in such options and 15% in such futures on a daily basis.

The Fund may conduct foreign currency transactions on a spot (i.e., cash) or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies up to 10% of its total assets). Currency transactions made on a spot basis are for cash at the spot rate

prevailing in the currency exchange market for buying or selling currency.

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.

The Fund may invest up to 15% of its total assets in swap agreements, including, but not limited to, total return swaps, index swaps, and interest rate swaps. The Fund may utilize swap agreements in an attempt to gain exposure to the securities in a market without actually purchasing those securities, or to hedge a position. In seeking to establish a long or short position in such instruments, the Fund may use swaps based on published indices, including international indices.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as

determined in accordance with Commission staff guidance.

The Fund will seek to qualify for treatment as a Regulated Investment Company (RIC) under the Internal Revenue Code. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N-1A).¹³ The Fund will not invest in leveraged or inverse leveraged Underlying ETPs.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions, and taxes, among other things, can be found in the Notice and Registration Statement, as applicable.¹⁴

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 Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that

¹³ The Exchange states that the Fund's broad-based securities market index, which is to be determined, will be identified in an amendment to the Registration Statement.

¹⁴ See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

¹⁵ 15 U.S.C. 78f.

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

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 Fund and 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,¹⁸ 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 ("CTA") high-speed line. In addition, the Portfolio Indicative Value ("PIV"), as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session.¹⁹ 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.²⁰ The Fund will calculate NAV once each business day as of the close of normal

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁹ According to the Exchange, several major market data vendors widely disseminate PIVs taken from CTA or other data feeds.

²⁰ On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's website: ticker symbol

trading on the New York Stock Exchange (normally, 4:00 p.m. Eastern Time). In addition, information regarding 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 information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. The website for the Fund will include a form of the prospectus for the Fund, additional data relating to NAV, and other applicable quantitative information. The intra-day, closing, and settlement prices of the portfolio investments (e.g., Underlying ETPs, put and call options, futures contracts, forward contracts, money market funds, and options on futures contracts) will also be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Further, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for the Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the New York Stock Exchange via the National Securities Clearing Corporation. The basket represents one "Creation Unit" of the Fund.

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

(if applicable), name of security and financial instrument, number of shares or dollar value of each security and financial instrument held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge.

be made available to all market participants at the same time.²¹ 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.²² The Exchange will consider the suspension of trading in or removal from listing of the Shares if the PIV is no longer calculated or available or the Disclosed Portfolio is not made available to all market participants at the same time.²³ The Exchange represents that the Adviser is not affiliated with a broker-dealer. The Exchange further represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio.²⁴ The Commission notes that Adviser and Sub-Adviser personnel who make decisions

²¹ See NYSE Arca Equities Rule 8.600(d)(1)(B).

²² With respect to trading halts, the Exchange may consider all 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.

²³ See NYSE Arca Equities Rule 8.600(d)(2)(C)(ii).

²⁴ 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, the 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 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

on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.²⁵ 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.²⁶ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Commission also notes that the Exchange would be able to obtain surveillance information from all securities exchanges listing and/or trading the securities held by the Fund, including information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs, Depositary Receipts, futures, options, and other applicable portfolio securities are listed and traded.

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 applicable to derivative products, which

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.

²⁵ See Commentary .06 to NYSE Arca Equities Rule 8.600.

²⁶ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

include Managed Fund Shares, 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 Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the 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 Equity Trading Permit 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 Equity Trading Permit 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,²⁷ as provided by NYSE Arca Equities Rule 5.3.
- (6) The Fund may not hold more than an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests.
- (7) Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not

²⁷ See 17 CFR 240.10A-3.

otherwise invest in non-U.S.-registered issues. Options, futures, and options on futures contracts in which the Fund invests will be U.S. exchange-listed. The Fund will invest no more than 15% of total assets in such options and 15% of total assets in such futures on a daily basis. The Fund may invest up to 15% of its total assets in swap agreements, including, but not limited to, total return swaps, index swaps, and interest rate swaps.

- (8) The Fund will not invest in leveraged or inverse leveraged Underlying ETPs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.
- (9) The Exchange would be able to obtain surveillance information from all securities exchanges listing and/or trading the securities held by the Fund, including information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs, Depositary Receipts, futures, options, and other applicable portfolio securities are listed and traded.
- (10) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

²⁸ 15 U.S.C. 78f(b)(5).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSEArca-2012-57) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Kevin M. O'Neill
Deputy Secretary

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).