

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70347; File No. SR-NYSEArca-2013-85)

September 9, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes to the Means of Achieving the Investment Objective Applicable to the AdvisorShares QAM Equity Hedge ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on August 27, 2013, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reflect changes to the means of achieving the investment objective applicable to the AdvisorShares QAM Equity Hedge ETF (“Fund”). The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (“Shares”) of the AdvisorShares QAM Equity Hedge ETF, a series of AdvisorShares Trust (“Trust”),⁴ under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The Shares are offered by 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 company.⁵ The investment advisor to the Fund is AdvisorShares Investments, LLC (“Adviser”). Commerce Asset Management is the sub-advisor (“Sub-Adviser”) to the Fund and provides day-to-day portfolio management of the Fund.

⁴ See Securities Exchange Act Release No. 67559 (August 1, 2012), 77 FR 47482 (August 8, 2012) (SR-NYSEArca-2012-57) (“Prior Order”). See also Securities Exchange Act Release No. 67196 (June 13, 2012), 77 FR 36591 (June 19, 2012) (SR-NYSEArca-2012-57) (“Prior Notice,” and together with the Prior Order, the “Prior Release”). The Fund and the Shares are currently in compliance with the listing standards and other rules of the Exchange and the requirements set forth in the Prior Release.

⁵ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“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 (15 U.S.C. 77a) (“Securities Act”) and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (“Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the 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) (“Exemptive Order”).

In this proposed rule change, the Exchange proposes to reflect changes to the description of the measures the Sub-Adviser will utilize to implement the Fund's investment objective.⁶

As stated in the Prior Release, in managing the Fund's portfolio, among other proprietary analytics, the Sub-Adviser utilizes Markov Processes International, LLC's ("MPI") 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 identifies 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 uses 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. As stated in the Prior Release, the Fund's portfolio typically consists of up to 50 Underlying ETPs and other securities.

Going forward, the Fund proposes to implement the following changes from the representations made in the Prior Release. First, in managing the Fund's portfolio, the Fund will no longer utilize the MPI DSA software. Instead, the Sub-Adviser will utilize, among other proprietary analytics, its own quantitative techniques, including time dependent factor approximations, to help select the Fund's investments and determine the allocation among such investments. The Sub-Adviser will use quantitative analysis including other proprietary analytics to define and track the various market factors and relative exposures and to adjust the Fund's portfolio as necessary. Second, the Sub-Adviser will identify approximately 100, instead of approximately 50, market factors that track the aggregated exposure and approximate the

⁶ The changes described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement. See note 5, supra. The Adviser represents that the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

returns of the selected universe of long/short equity hedge funds.⁷ Third, the Fund's portfolio typically will consist of between 40 and 80, instead of up to 50, Underlying ETPs and other securities, as described in the Prior Release.

The Adviser represents that the purpose of this change is, first, to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by substantially increasing the number of market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. Such an increase will permit the Fund to include a broader range of market sectors in the mid- and large-cap equity securities and Underlying ETPs in which the Fund invests, and will further the Fund's objective to seek capital appreciation. Second, the Fund will utilize proprietary quantitative techniques to select the Fund's investments and allocations, which will provide the Fund with additional control over its investments. Third, the Fund will substantially increase the maximum number of Underlying ETPs and other securities that will compose the Fund's portfolio, which will also provide additional flexibility to the Fund to include a broader range of securities in furtherance of the Fund's investment objectives.

The Exchange also notes that the Prior Release stated that the Sub-Adviser is affiliated with a broker-dealer. The Adviser represents that the Sub-Adviser is no longer affiliated with a broker-dealer.

The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE

⁷ As stated in the Prior Release, 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 seeks to remain invested at all times in securities or derivatives (as described in the Prior Release) that provide the desired exposures to market factors.

Arca Equities Rule 8.600. Except for the changes noted above, all other facts presented and representations made in the Prior Release remain unchanged. All terms referenced but not defined herein are defined in the Prior Release.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)⁸ that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is, first, to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by substantially increasing the number of market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds. Such an increase will permit the Fund to include a broader range of market sectors in the mid- and large-cap equity securities and Underlying ETPs in which the Fund invests, and will further the Fund's objective to seek capital appreciation. Second, the Fund will utilize proprietary quantitative techniques to select the Fund's investments and allocations, which will provide the Fund with additional control over its investments. Third, the Fund will substantially increase the maximum number of Underlying ETPs and other securities that will compose the Fund's portfolio, which will also provide additional flexibility to

⁸ 15 U.S.C. 78f(b)(5).

the Fund to include a broader range of securities in furtherance of the Fund's investment objectives. The Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective, as discussed above.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective, as discussed above. The Adviser represents that there is no change to the Fund's investment objective. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to the Fund's means of achieving the investment objective will permit the Fund to invest in a broader number of market sectors and a greater number of Underlying ETPs

and other securities, and will enhance competition among issues of Managed Fund Shares that invest in equity securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Fund to immediately implement the changes proposed herein.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹¹ Id.

¹² 17 CFR 240.19b-4(f)(6)(iii).

Under the proposal,¹³ (1) the Fund would seek to employ certain proprietary techniques, in lieu of the MPI DSA software, in addition to other proprietary analytics, to help select and determine the allocation of its investments and to define and track the various market factors and relative exposures and to adjust the Fund's portfolio, as necessary, (2) the Sub-Adviser would seek to identify approximately 100, instead of approximately 50, market factors that track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds, and (3) the Fund's portfolio would seek to consist of between 40 and 80, instead of up to 50, Underlying ETPs and other securities. The Commission believes that utilizing certain proposed proprietary techniques, in addition to other proprietary analytics, increasing the number of identifiable market factors to track the aggregated exposure and approximate the returns of the selected universe of long/short equity hedge funds and raising the maximum number of Underlying ETPs and other securities in which the Fund may invest would allow for additional flexibility for the Fund to include a broader and more diversified range of market sectors and securities investments, in furtherance of the Fund's investment objective to seek 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 constituents.¹⁴ In addition, the Exchange represents that, by investing in a broader range of market sectors, the Sub-Adviser may be able to reduce some of the market risk associated with investment in a

¹³ In the proposed rule change, the Exchange also clarified that the Sub-Adviser is no longer affiliated with a broker-dealer. The Commission notes that, as stated in the Prior Release, in the event the Sub-Adviser becomes newly 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.

¹⁴ See Prior Release, supra note 4 (providing additional details regarding the investment objective of the Fund).

smaller number of market sectors and reduce price volatility in the Fund's Shares.

The Exchange represents that the Fund's investment objective is not changing, all other representations made in the Prior Release remain unchanged, and the Fund will continue to comply with all of the listing requirements under NYSE Arca Equities Rule 8.600. For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues and is consistent with the protection of investors and the public interest. Therefore, the Commission waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.¹⁵

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2013-85 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2013-85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.. Copies of the filing also will be available for inspection and copying at the

principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2013-85 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

Kevin M. O'Neill
Deputy Secretary

¹⁶ 17 CFR 200.30-3(a)(12).