

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-73181; File No. SR-NYSEArca-2014-103)

September 23, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to an Increase in the Number of Securities Held by the Peritus High Yield ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 17, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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 an increase in the number of securities that may be held by the Peritus High Yield ETF. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Peritus High Yield ETF (“Fund”) under NYSE Arca Equities Rule 8.600⁴, which governs the listing and trading of Managed Fund Shares.⁵

The Shares are 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

⁴ See Securities Exchange Act Release No. 63329 (November 17, 2010), 75 FR 71760 (November 24, 2010) (SR-NYSEArca-2010-86) (the “Prior Order”). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 63041 (October 5, 2010), 75 FR 62905 (October 13, 2010) (“Prior Notice” and, together with the Prior Order, the “Prior Release”). The Exchange subsequently filed with the Commission several proposed rule changes relating to changes in the Fund’s holdings. See Securities Exchange Act Release Nos. 66818 (April 17, 2012), 77 FR 24233 (April 23, 2012) (SR-NYSEArca-2012-33) (notice of filing and immediate effectiveness of proposed rule change relating to the Fund’s investment in equity securities) (“Equities Investment Release”); 70284 (August 29, 2013), 78 FR 54715 (September 5, 2013) (SR-NYSEArca-2013-83) (notice of filing and immediate effectiveness of proposed rule change relating to the Fund’s investments in leveraged loans) (“Leveraged Loan Release”); 72433 (June 19, 2014), 79 FR 36114 (June 25, 2014) (SR-NYSEArca-2014-69) (notice of filing and immediate effectiveness of proposed rule change relating to an increase in the Fund’s investments in equity securities) (“Equities Increase Release”, and together with the Prior Release, the Equity Investment Release, and the Leveraged Loan Release, the “Prior Releases”).

⁵ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

management investment company.⁶ The Fund's Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

The investment adviser to the Fund is AdvisorShares Investments, LLC (the "Adviser"). Peritus I Asset Management, LLC is the Fund's sub-adviser ("Peritus" or the "Sub-Adviser").

According to the Registration Statement and as stated in the Prior Release, the Fund's investment objective is to achieve high current income with a secondary goal of capital appreciation. The Sub-Adviser seeks to achieve the Fund's investment objective by selecting, among other investments, a focused portfolio of high yield debt securities, which include senior and subordinated corporate debt obligations (such as bonds, debentures, notes and commercial paper). The Fund does not have any portfolio maturity limitation and may invest its assets from time to time primarily in instruments with short-term, medium-term or long-term maturities. The Adviser represents that the investment objective of the Fund is not changing.

As stated in the Prior Release, the Fund's portfolio typically consists of 40-60 holdings, which are disclosed on its website (www.advisorshares.com) daily after the close of trading on the Exchange (normally, 4:00 p.m., Eastern time) and prior to the opening of trading on the Exchange the following day.

The Exchange proposes to reflect a change to be implemented by the Fund with respect to the number of holdings that will be included in the Fund's portfolio. Specifically, going

⁶ The Trust is registered under the 1940 Act. On October 29, 2012, 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) and the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (the "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. 29291 (May 28, 2010) (File No. 812-13677) ("Exemptive Order").

forward, under normal circumstances,⁷ the Fund's portfolio will consist of 40-100 holdings; however, the Fund's portfolio may consist of more than 100 holdings if such increase is in the Fund's best interest.⁸

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 its investment objective and will not be used to enhance leverage.

As stated in the Prior Release, on a daily basis, the Adviser discloses 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. All representations made in the Prior Releases regarding the availability of information relating to the Shares, trading halts, trading rules, the Portfolio Indicative Value and surveillance, among others, will continue to apply to trading in the Shares.

The Adviser represents that the proposed change to permit an increase in the number of portfolio holdings, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective. Because the size of the Fund has grown substantially since its inception, in terms of market capitalization and Shares outstanding, the Adviser and Sub-Adviser believe that it is appropriate for the Fund

⁷ The term "under normal circumstances" includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including 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.

⁸ The change to the number of the Fund's holdings will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement on Form N-1A, and shareholders will be notified of such change by means of such amendment.

to increase the number of securities in which the Fund may invest under normal circumstances for the purpose of allowing the Fund to take advantage of an increased number of investment opportunities in the fixed income and equities markets. Such an increase will provide the Fund with additional flexibility to achieve high current income through investments in fixed income and equity securities, and to achieve the secondary goal of capital appreciation through possible price appreciation of such investments. Except for the change noted above, all other representations made in the Prior Releases remain unchanged.⁹ The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁰ 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 be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via the Intermarket

⁹ See note 4, supra. All terms referenced but not defined herein are defined in the Prior Release.

¹⁰ 15 U.S.C. 78f(b)(5).

Surveillance Group (“ISG”) from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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 NAV per Share is calculated daily and that the NAV and the Disclosed Portfolio is made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. The Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), is disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Core Trading Session. On a daily basis, the Adviser discloses 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 Fund’s holdings are disclosed on its website daily after the close of trading on the Exchange and prior to the opening of trading on the Exchange the following day. 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 quotation and last sale information is available via the Consolidated Tape Association high-speed line. Price information regarding the Fund’s fixed income investments is available from major market data vendors. The intra-day, closing and settlement prices for exchange-listed equity securities held by the Fund are also readily available from the national securities exchanges trading such securities. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons

that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares is subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The website for the Fund includes a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. In addition, as stated in the Prior Notice, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

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. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as stated in the Prior Release, investors have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares. The Adviser represents that the proposed change to permit an increase in the number of portfolio holdings, as described above, is consistent with the Fund's investment objective, and will further assist the Adviser and Sub-Adviser to achieve such investment objective. Such an increase may further the public interest by providing the Fund with additional flexibility to achieve high current income through investments in fixed income and equity securities, and to achieve the secondary goal of capital appreciation through possible price appreciation of such investments.

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 purpose of the Act. The

Exchange believes the proposed rule change, in permitting the Fund, under normal circumstances, to hold an increased number of securities as part of its portfolio, will help the Fund to achieve its investment objective, and will enhance competition among issues of Managed Fund Shares that invest in fixed income and 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 foregoing 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 for 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 Act¹¹ and Rule 19b-4(f)(6)(iii) thereunder.¹²

At any time within 60 days of the filing of the 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.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

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-2014-103 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2014-103. 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 am and 3:00 pm. Copies of such filing will also 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 Number SR-NYSEArca-2014-103 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

Kevin M. O'Neill
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).