

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-75100; File No. SR-NYSEArca-2015-47)

June 3, 2015

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Representation Regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's Holdings of American Depositary Receipts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on May 27, 2015, 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 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 change a representation regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's holdings of American Depositary Receipts. Shares of the WCM/BNY Mellon Focused Growth ADR ETF have been approved for listing and trading 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](http://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

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<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

received on the proposed rule change. The text of those statements may be examined at the places 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 AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF (the “Fund”) under NYSE Arca Equities Rule 8.600<sup>3</sup>, which governs the listing and trading of Managed Fund Shares.<sup>4</sup> The Fund’s Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

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 management investment company.<sup>5</sup> The investment adviser to the Fund is AdvisorShares

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<sup>3</sup> See Securities Exchange Act Release No. 62502 (July 15, 2010), 75 FR 42471 (July 21, 2010) (SR-NYSEArca-2010-57) (the “Prior Order”). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 62344 (June 21, 2010), 75 FR 37498 (June 29, 2010) (“Prior Notice” and, together with the Prior Order, the “Prior Release”).

<sup>4</sup> 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.

<sup>5</sup> The Trust is registered under the 1940 Act. On November 1, 2014, 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

Investments, LLC (the “Adviser”). WCM Investment Management (“WCM”) is the sub-adviser and portfolio manager to the Fund (“Sub-Adviser”).

According to the Registration Statement, and as stated in the Prior Release, the Fund’s investment objective is long-term capital appreciation above international benchmarks such as the BNY Mellon Classic ADR Index and the MSCI EAFE Index. WCM seeks to achieve the Fund’s investment objective by selecting a portfolio of U.S. traded securities of non-U.S. organizations included in the BNY Mellon Classic ADR Index. The BNY Mellon Classic ADR Index predominantly includes American Depositary Receipts (“ADRs”) and, in addition, includes other Depositary Receipts (“DRs”), which include Global Depositary Receipts (“GDRs”), Euro Depositary Receipts (“Euro DRs”) and New York Shares (“NYSs”).<sup>6</sup>

The Prior Release stated that the Fund, under normal circumstances, will have at least 80% of its total assets invested in ADRs (the “80% Representation”). The Fund also may invest in other equity securities, including common and preferred stock, warrants, convertible securities and master limited partnerships. As stated in the Prior Release, the Fund’s portfolio consists primarily of ADRs.<sup>7</sup>

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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”).

<sup>6</sup> According to the Registration Statement, DRs, which include ADRs, GDRs, Euro DRs and NYSSs, are negotiable securities that generally represent a non-U.S. company's publicly traded equity or debt. Depositary Receipts may be purchased in the U.S. secondary trading market. They may trade freely, just like any other security, either on an exchange or in the over-the-counter market. Although typically denominated in U.S. dollars, Depositary Receipts can also be denominated in Euros. Depositary Receipts can trade on all U.S. stock exchanges as well as on many European stock exchanges.

<sup>7</sup> The Prior Release further stated that the Fund will not invest in non-U.S. equity securities outside of U.S. markets. The Exchange recently has filed a proposed rule change pursuant to Rule 19b-4 under the Act that amended such statement in the Prior Release to provide that the Fund may invest in securities outside of U.S. markets, and that not more than

The Exchange has notified the Fund that it currently is not in compliance with the 80% Representation.<sup>8</sup> In order to permit the continued listing and trading of Shares of the Fund, the Exchange proposes to amend such statement in the Prior Release to provide that the Fund will invest at least 80% of its total assets in ADRs and other equity securities, including common and preferred stock, warrants, convertible securities and master limited partnerships. However, the Fund's portfolio will consist primarily of ADRs.

As stated in the Second Prior Release, the Fund now may invest in non-U.S. equity securities, subject to a limitation on net assets invested in equity securities whose principal market is not a member of the ISG.<sup>9</sup> Therefore, the Fund, in certain cases, could choose to acquire exposure to non-U.S. equity markets by investing in non-U.S. equities directly rather than by investing in ADRs. Therefore, it is appropriate to reduce the percentage of Fund assets required to be in ADRs. In addition, a reduced threshold for ADR investment would allow the Fund to take advantage of opportunities in the equities markets without being subject to the 80% Representation, in furtherance of the Fund's investment objective. Nevertheless, the Fund's portfolio would continue to consist primarily of ADRs (i.e., more than 50% of the Fund's total assets would be invested in ADRs).

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10% of the net assets of the Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. See Securities Exchange Act Release No. 74271 (February 13, 2015), 80 FR 9301 (February 20, 2015) (SR-NYSEArca-2015-06) ("Second Prior Release").

<sup>8</sup> The Trust issued a press release, dated March 24, 2015, relating to the non-compliance. The Exchange also has added a "below compliance" (".BC") indicator to the Fund's trading symbol.

<sup>9</sup> See note 7, supra.

The Exchange notes that the Commission has previously approved similar percentage limitations for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.<sup>10</sup>

Except for the change described above, all other representations made in the Prior Release and the Second Prior Release remain unchanged.<sup>11</sup> The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

The Exchange represents that the trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>12</sup> The Exchange represents that these 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 federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from such markets and other entities. The Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance

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<sup>10</sup> See, e.g., Securities Exchange Act Release No. 71540 (February 12, 2014) (SR-NYSEArca-2013-138) (order approving listing and trading of shares of iShares Enhanced International Large-Cap ETF and iShares Enhanced International Small-Cap ETF Under NYSE Arca Equities Rule 8.600).

<sup>11</sup> See notes 3 and 7, *supra*. All terms referenced but not defined herein are defined in the Prior Release.

<sup>12</sup> FINRA surveils trading on the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

sharing agreement.<sup>13</sup> 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.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>14</sup> 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 are listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. As noted above, the Fund now may invest in non-U.S. equity securities, subject to a limitation on net assets invested in equity securities whose principal market is not a member of the ISG. Therefore, the Fund, in certain cases, could choose to acquire exposure to non-U.S. equity markets by investing in non-U.S. equities directly rather than by investing in ADRs. Therefore, it is appropriate to reduce the percentage of Fund assets required to be in ADRs. In addition, a reduced threshold for ADR investment would allow the Fund to take advantage of opportunities in the equities markets without being subject to the 80% Representation, in furtherance of the Fund's investment objective. The Fund's portfolio would continue to consist primarily of ADRs

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<sup>13</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org). The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement

<sup>14</sup> 15 U.S.C. 78f(b)(5).

(i.e., more than 50% of the Fund's total assets would be invested in ADRs). The Commission has previously approved similar percentage limitations for other funds listed on the Exchange under NYSE Arca Equities Rule 8.600.<sup>15</sup> The Exchange notes that that not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (excluding non-exchange-traded investment company securities) shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Such a representation assures that most applicable exchange-traded assets of the Fund will be assets whose principal market is an ISG member or a market with which the Exchange has a comprehensive surveillance sharing agreement.

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 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 net asset value ("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

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<sup>15</sup> See note 10, supra.

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 equity 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 represents that the trading in the Shares is subject to the existing trading surveillances,



administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these 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 federal securities laws applicable to trading on the Exchange. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed equity securities (including ADRs) with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed equity securities (including ADRs) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Adviser represents that the proposed change, 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 long-term capital appreciation above international benchmarks.

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 is designed to allow the Fund to invest in a broader range of non-U.S. equity securities thereby helping the Fund to achieve its investment objective, and will enhance competition among issues of Managed Fund Shares that invest in non-U.S. 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 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 Act<sup>16</sup> and Rule 19b-4(f)(6) thereunder.<sup>17</sup>

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 under Section 19(b)(2)(B) of the Act<sup>18</sup> to determine whether the proposed rule change should be approved or disapproved.

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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

<sup>18</sup> 15 U.S.C. 78s(b)(2)(B).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-47 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEArca-2015-47. 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 Section, 100 F Street, NE, Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the 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-2015-47 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.<sup>19</sup>

Robert W. Errett  
Deputy Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).