

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-76224; File No. SR-NYSEArca-2015-94)

October 22, 2015

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 8, 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 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 change a representation regarding the AdvisorShares WCM/BNY Mellon Focused Growth ADR ETF's holdings. 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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 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>4</sup>, which governs the listing and trading of Managed Fund Shares.<sup>5</sup> The Fund’s Shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600.

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<sup>4</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”). The Exchange has filed a proposed rule change pursuant to Rule 19b-4 under the Act to provide that the Fund may invest in securities outside of U.S. markets, and 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 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”). The Exchange also has filed a proposed rule change pursuant to Rule 19b-4 under the Act to provide that the Fund will invest at least 80% of its total assets in American Depositary Receipts (“ADRs”) and other equity securities, including common and preferred stock, warrants, convertible securities and master limited partnerships, and that the Fund’s portfolio will consist primarily of ADRs. See Securities Exchange Act Release No. 75100 (June 3, 2015), 80 FR 32641 (June 9, 2015) (SR-NYSEArca-2015-47) (“Third Prior Release”).

<sup>5</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”).

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>6</sup> The investment adviser to the Fund is AdvisorShares 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 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>7</sup>

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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>6</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 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>7</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. DRs may be purchased in the U.S. secondary trading

The Prior Notice and the Second Prior Release stated that the Fund's portfolio will typically have fewer than 30 companies. The Exchange proposes to amend such statement in the Prior Notice and the Second Prior Release to provide that, going forward, the Fund's portfolio will typically have fewer than 40 companies. The Adviser and Sub-Adviser have represented that an increase in the number of companies typically included in the Fund's portfolio would provide the Fund with additional investment opportunities to permit the Fund to meet its investment objective, as described above.

Except for the change described above, all other representations made in the Prior Release, the Second Prior Release and the Third Prior Release remain unchanged.<sup>8</sup> 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)<sup>9</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.

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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, DRs can also be denominated in Euros. DRs can trade on all U.S. stock exchanges as well as on many European stock exchanges.

<sup>8</sup> See note 4, supra. All terms referenced but not defined herein are defined in the Prior Release.

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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. Except for the change described above, all other representations made in the Prior Release, the Second Prior Release and the Third Prior Release remain unchanged. 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 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. An increase in the number of companies typically included in the Fund’s portfolio from 30 to 40 would further diversify the Fund’s investments and may decrease the susceptibility to manipulation of the Shares’ price.

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. 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 would further the public interest by providing the Fund with additional flexibility to achieve long-term capital appreciation above international benchmarks. An increase in the number of companies typically included in the Fund’s portfolio from 30 to 40 would further diversify the Fund’s investments and may decrease the susceptibility to manipulation of the Shares’ price.

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that an increase in the number of companies typically included in the Fund's portfolio from 30 to 40 would further diversify the Fund's investments and may decrease the susceptibility to manipulation of

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</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.

the Shares' price. For that reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change to be operative upon filing.<sup>12</sup>

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2015-94 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-2015-94. 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

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<sup>12</sup> 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).

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 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2015-94 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>13</sup>

Brent J. Fields  
Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).