

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77050; File No. SR-NYSEArca-2016-23)

February 4, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the AdvisorShares Athena High Dividend ETF's Investments in Sponsored and Un-sponsored American Depositary Receipts

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 January 29, 2016, 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 the Substance of the Proposed Rule Change

The Exchange proposes to change the description of the AdvisorShares Athena High Dividend ETF's investments in sponsored and un-sponsored American Depositary Receipts. The Commission has previously approved listing and trading on the Exchange of shares of the AdvisorShares Athena High Dividend ETF, and such shares are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 Athena High Dividend ETF (the “Fund”)⁴ under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Fund is an actively managed exchange traded fund. The Shares are offered by the AdvisorShares Trust (the “Trust”).⁵ Shares of the Fund 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”). AthenaInvest Advisors LLC (“Sub-Adviser”) is the Fund’s sub-adviser.

⁴ See Securities Exchange Act Release No. 72665 (July 24, 2014), 79 FR 44236 (July 30, 2014) (SR-NYSEArca-2014-59) (order approving listing and trading on the Exchange of Shares of the Fund) (“Prior Order”). See also Securities Exchange Act Release No. 72298 (June 3, 2014), 79 FR 33024 (June 9, 2014) (SR-NYSEArca-2014-59) (notice of filing of proposed rule change relating to listing and trading on the Exchange of Shares of the Fund (“Prior Notice”, and together with the Prior Order, the “Prior Release”).

⁵ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On February 18, 2014, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (“Securities Act”) and 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.

As stated in the Prior Release, the Fund’s investment objective is to seek long-term capital appreciation. Under normal market conditions, the Fund seeks to achieve its investment objective by investing substantially all of the Fund’s assets in (1) U.S. and foreign common stock of issuers of any capitalization range, and (2) American Depositary Receipts (“ADRs”), Global Depositary Receipts (“GDRs”), European Depositary Receipts (“EDRs”) and International Depositary Receipts (“IDRs”, and together with ADRs, GDRs, and EDRs, “Depositary Receipts”) that provide investment exposure to global equity markets.⁶ The Prior Release stated that, other than unsponsored ADRs, all U.S. and foreign common stocks and Depositary Receipts in which the Fund will invest will be exchange-traded. The Prior Release further stated that ADRs may be sponsored or unsponsored, but unsponsored ADRs will not exceed 10% of the Fund’s net assets.⁷

In this proposed rule change, the Exchange proposes to change the description of the Fund’s investments in sponsored and unsponsored ADRs. Going forward, U.S. and foreign common stocks in which the Fund will invest will be exchange-traded, and non-exchange-traded ADRs will not exceed 10% of the Fund’s net assets.⁸ The proposed change, therefore, would include both unsponsored ADRs (which are not exchange-traded) and certain sponsored ADRs that are traded over-the-counter (“OTC”) within the 10% limit to Fund assets that may be invested in non-exchange-traded ADRs.

While sponsored ADRs are usually exchange-traded, certain sponsored ADRs are traded OTC. The Prior Release did not accommodate investments by the Fund in sponsored ADRs that

⁶ See note 10 of the Prior Notice.

⁷ Id.

⁸ The Adviser and Sub-Adviser represent that the Sub-Adviser will not implement the changes described herein until the instant proposed rule change is operative.

are traded OTC. The proposed change would allow the Fund to invest in both exchange-traded and OTC sponsored ADRs. However, the Fund's investments in unsponsored ADRs and OTC sponsored ADRs will not exceed 10% of the Fund's net assets, in the aggregate.

OTC sponsored ADRs will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date. If an OTC sponsored ADR does not trade on a particular day, then the mean between the last quoted closing bid and asked price will be used. Intra-day and closing price information relating to OTC sponsored ADRs will be available from major market data vendors.

In addition, the Prior Release stated that unsponsored ADRs will be valued on the basis of the market closing price on the exchange where the stock of the foreign issuer that underlies the ADR is listed. The Exchange proposes to change this representation to state that unsponsored ADRs will be valued at the last reported sale price from the OTC Bulletin Board or OTC Link LLC on the valuation date. If an unsponsored ADR does not trade on a particular day, then the mean between the last quoted closing bid and asked price will be used.

The Sub-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.

Except for the changes noted above, all other 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)⁹ 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 Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The proposed change would include both unsponsored ADRs (which are not exchange-traded) and certain sponsored ADRs that are traded OTC within the 10% limit to Fund assets that may be invested in non-exchange-traded ADRs.

The Prior Release did not accommodate investments by the Fund in sponsored ADRs that are traded OTC. The proposed change would provide the Fund with additional flexibility with respect to its investments in sponsored ADRs by allowing the Fund to invest in both exchange-traded and OTC sponsored ADRs. However, the Fund's investments in unsponsored ADRs and OTC sponsored ADRs will not exceed 10% of the Fund's net assets, in the aggregate.

The Sub-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.

Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

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 Sub-Adviser represents that there is no

⁹ 15 U.S.C. 78f(b)(5).

change to the Fund's investment objective. As noted above, the Fund's investments in unsponsored ADRs and OTC sponsored ADRs will not exceed 10% of the Fund's net assets, in the aggregate.

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. Except for the change noted above, all other representations made in the Rule 19b-4 filing underlying 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 Exchange believes the proposed rule change regarding investments in ADRs will promote competition among actively managed funds that invest in U.S. and foreign common stocks and Depositary Receipts, to the benefit of the investing public.

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

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)¹² of the Act 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 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

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2016-23 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-2016-23. 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 such filing also will be available for inspection and copying at the principal offices 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-2016-23, 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

Robert W. Errett
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).