

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77858; File No. SR-NYSEArca-2016-66)

May 19, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Reflecting a Change to the Means of Achieving the Investment Objective with Respect to the AdvisorShares EquityPro 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 May 5, 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 Substance of the Proposed Rule Change

The Exchange proposes to reflect a change to the means of achieving the investment objective with respect to the AdvisorShares EquityPro ETF. Shares of the AdvisorShares EquityPro ETF are currently listed and traded on the Exchange. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 listing and trading on the Exchange of shares (“Shares”) of the AdvisorShares EquityPro ETF (formerly, the Global Alpha & Beta ETF) (“Fund”), a series of AdvisorShares Trust (“Trust”)⁴ under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. Shares of the Fund are currently listed and traded on the Exchange.

The Shares are offered by the Trust, which is registered with the Commission as an open-end management investment company.⁵ The investment advisor to the Fund is AdvisorShares Investments, LLC (the “Adviser”). The sub-adviser for the Fund is Elements Financial, PLC (the

⁴ See Securities Exchange Act Release Nos. 67277 (June 27, 2012), 77 FR 39554 (July 3, 2012) (SR-NYSEArca-2012-39) (“Prior Order”); 66973 (May 11, 2012), 77 FR 29429 (May 17, 2012) (SR-NYSEArca-2012-39) (“Prior Notice,” and together with the Prior Order, the “First Prior Release”). See also Securities Exchange Act Release No. 72436 (June 19, 2014), 79 FR 36118 (June 25, 2014) (SR-NYSEArca-2014-70) (“Second Prior Release”) (notice of effectiveness of proposed rule change regarding the Fund’s use of certain U.S. exchange-listed options).

⁵ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1). On November 1, 2015, 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 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. 29291 (May 28, 2010) (File No. 812-13677) (“Exemptive Order”).

“Sub-Adviser”). Neither the Adviser nor the Sub-Adviser is a registered broker-dealer or is affiliated with a broker-dealer.

In this proposed rule change, the Exchange proposes to reflect a change to the means the Adviser will utilize to implement the Fund’s investment objective to permit investments in U.S. exchange-traded futures contracts, as described below.

The First Prior Release stated that the Fund’s investment objective is long-term capital growth. The First Prior Release further stated that the Fund will not invest in options contracts, futures contracts, or swap agreements. The Second Prior Release stated that the Fund may invest up to 10% of the Fund’s net assets in the following types of options: U.S. exchange-listed index options; U.S. exchange-listed individual stock options; or U.S. exchange-listed exchange-traded fund (“ETF”) options.

Going forward, the Adviser wishes to revise the representations in the First Prior Release and the Second Prior Release to state that the Fund, in addition to investments in U.S. exchange-listed options, as described above, may invest up to 10% of the Fund’s net assets in U.S. exchange-traded stock index futures on broad based indexes, such as futures on the S&P 500 Index. All futures contracts in which the Fund may invest will be traded on U.S. futures exchanges. Such futures contracts will be traded only on futures exchanges that are members of the Intermarket Surveillance Group (“ISG”). The Fund may seek to invest in futures contracts in order to gain market exposure and/or to hedge against a market decline.⁶

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

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange or 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.⁷ 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. The Fund’s investment in futures will not be used to enhance leverage.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) with other markets and other entities that are members of the ISG,⁸ and the Exchange and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For purposes of calculating net asset value (“NAV”) of Shares of the Fund, futures contracts will generally be valued at the settlement price of the relevant exchange on the day of valuation. Quotation and last sale information for futures contracts will be available from the exchanges on which they trade or from major market data vendors.

⁷ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

⁸ For a list of the current members of ISG, see www.isgportal.org.

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.

Except for the changes noted above, all other facts presented and representations made in the First Prior Release and Second Prior Release remain unchanged.

All terms referenced but not defined herein are defined in the First Prior Release and Second Prior Release.

The Exchange notes that the Commission has previously approved for listing other actively-managed exchange-traded funds that invest in U.S. exchange-traded futures.⁹

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 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. All futures in which the Fund will invest will be traded on U.S. futures exchanges, all of which are members of ISG.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, and 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

⁹ See, e.g., Securities Exchange Act Release No. 67552 (August 1, 2012), 77 FR 47131 (August 7, 2012) (SR-NYSEArca-2012-55) (order approving listing and trading on the Exchange of the STAR Global Buy-Write ETF under NYSE Arca Equities Rule 8.600).

¹⁰ 15 U.S.C. 78f(b)(5).

no change to the Fund's investment objective. All futures in which the Fund will invest will be traded on a U.S futures exchange. The Fund's investment in futures will not be used to enhance leverage. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) from such markets and other entities. In addition, the Exchange may obtain information regarding trading in futures (in addition to the exchange-traded assets referenced in the First Prior Release and Second Prior Release) from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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 there is no change to the Fund's investment objective. Except for the changes noted above, all other representations made in the First Prior Release and Second 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 will accommodate continued listing and trading of an issue of Managed Fund

Shares that, under normal conditions, principally holds large-capitalization, U.S. exchange-listed equities.

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) thereunder.¹²

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 argues that waiver of this requirement is consistent with the protection of investors and the public interest because the proposed change will permit the Fund to more efficiently implement its risk strategy, and, depending on market conditions, to hedge market risk or to provide an opportunity for enhanced returns, which may be to the benefit of investors. The Commission notes that, other than the change proposed herein, no other changes are being made with respect to the Fund, and all other representations made in the First Prior Release and Second Prior Release remain unchanged.

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.

The proposal would: (1) permit the Fund to invest in U.S. exchange-traded stock index futures on broad based indexes, such as futures on the S&P 500 Index; (2) confine all futures contracts in which the Fund may invest to be traded only on U.S. futures exchanges that are members of the ISG; and (3) limit the Fund's investments in futures contracts to 10% of the Fund's net assets. The Commission believes that the proposed change raises no new or novel regulatory issues and would allow the Fund to employ an additional strategy that would be consistent with the strategy of other Managed Fund Shares without undue delay.¹³ Thus, the Commission believes that waiver of the 30-day operative delay with respect to the proposed change to the Fund is consistent with the protection of investors and the public interest. The Commission hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁴

At any time within 60 days of the filing of the proposed rule change, the Commission 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.

¹³ See, e.g., Securities Exchange Act Release No. 77620 (April 14, 2016), 81 FR 23339 (April 20, 2016) (SR-BATS-2015-124) (order approving listing and trading of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust) and supra, note 9.

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also 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-2016-66 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-2016-66. 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 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-2016-66 and should be submitted on or before [I nsert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Robert W. Errett
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).