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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-69303; File No. SR-NYSEArca-2013-33)

April 4, 2013

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade the International Bear ETF under NYSE Arca Equities Rule 8.600

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 March 21, 2013, 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. On April 3, 2013, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”): International Bear 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ In Amendment No. 1, the Exchange made certain technical changes to the proposed rule change, including the substitution of the phrase “transact in” for the word “purchase” in the following sentence on page 5 of this Notice: “The Fund may transact in equity securities traded in the U.S. on registered exchanges or, in the case of American Depositary Receipts, the over-the-counter market.”

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares⁵: International Bear ETF ("Fund").⁶ The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Securities and Exchange Commission (the "Commission") as an open-end management

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.

⁶ The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR-NYSEArca-2010-79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) [sic] (SR-NYSEArca-2011-51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

investment company.⁷ The investment adviser to the Fund is AdvisorShares Investments, LLC (the “Adviser”). The Fund will have a sub-adviser (“Sub-Adviser”) that provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (the “Distributor”) is the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon (the “Administrator”) serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund’s portfolio.⁸ Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to

⁷ The Trust is registered under the 1940 Act. On October 19, 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 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”).

⁸ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment

NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not affiliated with a broker-dealer. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, (b) the Sub-Adviser is affiliated with a broker-dealer, or (c) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund’s investment objective will be to seek capital appreciation through short sales of international equity securities.

According to the Registration Statement, the Sub-Adviser will seek to achieve the Fund’s investment objective by short selling a portfolio of foreign equity securities, U.S. exchange-listed and traded equity securities of non-U.S. organizations, and American Depositary Receipts (“ADRs”), as described in more detail herein. The Fund may invest in such equity securities of any capitalization range and in any market sector at any time as necessary to seek to achieve the

adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Fund's investment objective. Under normal circumstances,⁹ at least 80% of the Fund's net assets will be such equity securities, which the Fund will short sell.

According to the Registration Statement, the Fund will be actively managed and thus will not seek to replicate the performance of a specified passive index of securities. Instead, it will use an active investment strategy to seek to meet its investment objective. The Sub-Adviser, subject to the oversight of the Adviser and the Board of Trustees, will have discretion on a daily basis to manage the Fund's portfolio in accordance with the Fund's investment objective and investment policies. The Sub-Adviser will utilize various fundamental and technical research techniques in security selection. In selecting short positions, the Sub-Adviser will seek to identify securities that may be overvalued and due for capital depreciation. Once a position is included in the Fund's portfolio, it will be subject to regular fundamental and technical risk management review.

According to the Registration Statement, the equity securities in which the Fund may invest consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, investments in master limited partnerships, rights and REITs. The Fund may transact in equity securities traded in the U.S. on registered exchanges or, in the case of ADRs, the over-the-counter market. The Fund may short sell up to 10% of its total assets in unsponsored ADRs. The Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging market countries.¹⁰

⁹ 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 equity 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.

¹⁰ According to the Registration Statement, emerging or developing markets exist in

According to the Registration Statement, the Fund may invest in issuers located outside the United States directly, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include ADRs, Global Depositary Receipts (“GDRs”), European Depositary Receipts (“EDRs”), International Depositary Receipts (“IDRs”), “ordinary shares,” and “New York shares.”¹¹ Except for up to 10% of ADRs, which may be unsponsored, such financial instruments will all be listed and traded on registered exchanges in the U.S. or markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

According to the Registration Statement, the Fund may engage regularly in short sales transactions in which the Fund sells a security it does not own. To complete such a transaction, the Fund must borrow or otherwise obtain the security to make delivery to the buyer. The Fund

countries that are considered to be in the initial stages of industrialization. The Fund will invest only in foreign equity securities that trade in markets that are members of the Intermarket Surveillance Group (“ISG”) or are parties to a comprehensive surveillance sharing agreement with the Exchange. For a list of the current members of ISG, [see www.isgportal.org](http://www.isgportal.org).

¹¹ According to the Registration Statement, ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer’s home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the U.S. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars.

then is obligated to replace the security borrowed by purchasing the security at the market price at the time of replacement. The price at such time may be more or less than the price at which the security was sold by the Fund.

According to the Registration Statement, until the security is replaced, the Fund will be required to pay to the lender amounts equal to any dividends or interest, which accrue during the period of the loan. To borrow the security, the Fund also may be required to pay a premium, which would increase the cost of the security sold. The Fund may also use repurchase agreements to satisfy delivery obligations in short sales transactions. The proceeds of the short sale will be retained by the broker, to the extent necessary to meet the margin requirements, until the short position is closed out.

According to the Registration Statement, until the Fund closes its short position or replaces the borrowed security, the Fund will: (a) maintain a segregated account containing cash or liquid securities at such a level that (i) the amount deposited in the account plus the amount deposited with the broker as collateral will equal the current value of the security sold short and (ii) the amount deposited in the segregated account plus the amount deposited with the broker as collateral will not be less than the market value of the security at the time the security was sold short; or (b) otherwise cover the Fund's short position. The Fund may use up to 100% of its portfolio to engage in short sales transactions and collateralize its open short positions.

Other Investments

While the Fund will invest at least 80% of its assets as described above, the Fund may invest in certain other investments, as described below. According to the Registration Statement, the Fund may invest in exchange-traded funds ("ETFs") registered pursuant to the 1940 Act,

exchange-traded notes (“ETNs”),¹² and other exchange-traded products (together with ETFs and ETNs, collectively, “ETPs”).¹³ The Fund will invest only in ETPs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

According to the Registration Statement, on a day-to-day basis, the Fund may hold U.S. government securities,¹⁴ short-term high quality fixed income securities, money market instruments, overnight and fixed-term repurchase agreements, cash and cash equivalents with maturities of one year or less for investment purposes and to cover its short positions.

¹² According to the Registration Statement, ETNs are senior, unsecured unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees. ETNs have a maturity date and, generally, are backed only by the creditworthiness of the issuer. It is expected that the issuer’s credit rating will be investment grade at the time of investment.

¹³ ETPs may include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The ETPs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Fund may invest in ETPs that are pooled investment vehicles not registered pursuant to the 1940 Act. Closed-end funds are pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

¹⁴ The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance; U.S. Treasury bills, which have initial maturities of one-year or less; U.S. Treasury notes, which have initial maturities of one to ten years; and U.S. Treasury bonds, which generally have initial maturities of greater than ten years.

According to the Registration Statement, to respond to adverse market, economic, political or other conditions, the Fund may refrain from short selling and increase its investment in U.S. government securities, short-term high quality fixed income securities, money market instruments, overnight and fixed-term repurchase agreements, cash and cash equivalents with maturities of one year or less. The Fund may hold little or no short positions for extended periods, depending on the Sub-Adviser's assessment of market conditions.

According to the Registration Statement, the Fund may invest in several different types of investment companies from time to time, including mutual funds and business development companies ("BDCs"),¹⁵ when the Adviser or the Sub-Adviser believes such an investment is in the best interests of the Fund and its shareholders. For example, the Fund may elect to invest in another investment company when such an investment presents a more efficient investment option than buying securities individually. The Fund also may invest in investment companies that are included as components of an index, such as BDCs, to seek to track the performance of that index. The Fund will invest only in BDCs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

According to the Registration Statement, the Fund may invest, under normal circumstances, up to 10% of its net assets in debt securities. Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated

¹⁵ According to the Registration Statement, a BDC is a less common type of closed-end investment company that more closely resembles an operating company than a typical investment company. BDCs generally focus on investing in, and providing managerial assistance to, small, developing, financially troubled, private companies or other companies that may have value that can be realized over time and with management assistance.

securities. The Fund may invest in non-investment-grade securities.¹⁶ The Fund may invest in variable and floating rate securities.

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans.¹⁷ The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy.¹⁸ However, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 1/3% of its assets.

According to the Registration Statement, the Fund may invest directly and indirectly in foreign currencies.

According to the Registration Statement, the Fund, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (i.e., delivery and payment can take place between a month and 120 days after the date of the transaction). These securities

¹⁶ Non-investment-grade securities, also referred to as "high-yield securities" or "junk bonds," are debt securities that are rated lower than the four highest rating categories by a nationally recognized statistical rating organization (for example, lower than Baa3 by Moody's Investors Service, Inc. or lower than BBB- by Standard & Poor's, a division of The McGraw-Hill Companies, Inc.) or are determined to be of comparable quality by the Adviser or the Sub-Adviser.

¹⁷ The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets.

¹⁸ Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. Such reverse repurchase agreements could be deemed to be a borrowing, but are not senior securities.

are subject to market fluctuation and no interest accrues to the purchaser during this period. At the time the Fund makes the commitment to purchase securities on a when-issued or delayed-delivery basis, the Fund will record the transaction and thereafter reflect the value of the securities, each day, in determining the Fund's net asset value ("NAV"). The Fund will not purchase securities on a when-issued or delayed-delivery basis if, as a result, more than 15% of the Fund's net assets would be so invested.

According to the Registration Statement, the Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.¹⁹

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies.²⁰

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking

¹⁹ The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

²⁰ See Form N-1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. See, e.g., Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.²¹

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.²²

The Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Net Asset Value

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders.

²¹ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

²² 26 U.S.C. 851.

The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange, LLC (the “NYSE”) (normally, 4:00 p.m., Eastern Time).

In calculating NAV, the Fund generally will value its investment portfolio at market price. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust’s Board of Trustees.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at the NAV only in a large specified number of Shares called a “Creation Unit.” The Shares of the Fund will be “created” at their NAV by market makers, large investors and institutions only in block-size Creation Units of at least 25,000 Shares.

The Trust will issue and sell Shares of the Fund only in Creation Units on a continuous basis through the Distributor, at their NAV next determined after receipt, on any business day, for an order received in proper form. Creation Units of the Fund will be sold only for cash. Creation Units will be sold at the NAV next computed, plus a transaction fee. All orders to create Creation Units must be placed for one or more Creation Unit size aggregations of Shares. All orders to create must be received by the Distributor no later than 3:00 p.m. Eastern Time, an hour before the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. Eastern Time) on the date such order is placed in order for the creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in

proper form. All purchases of the Fund will be effected through a transfer of cash directly through DTC.

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. The redemption proceeds for a Creation Unit of the Fund will consist solely of cash in an amount equal to the NAV of the Shares being redeemed, as next determined after receipt of a request in proper form, less a redemption transaction fee. An order to redeem Creation Units will be deemed received on the transmittal date if such order is received by the Administrator not later than 3:00 p.m. Eastern Time, on such transmittal date; such order will be effected based on the NAV of the Fund as next determined.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3²³ under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

²³ 17 CFR 240.10A-3.

Availability of Information

The Fund's website (www.advisorshares.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's website will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),²⁴ and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's website will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.²⁵

On a daily basis, the Fund's website will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security and financial instrument, number of shares and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The website information will be publicly available at no charge.

²⁴ The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

²⁵ Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the Fund’s Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust’s SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line, and, for the underlying securities, will be available from the securities exchanges on which they are listed. Information regarding the equity securities, debt securities, fixed income instruments, and other investments held by the Fund will be available from the U.S. and non-U.S. securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.²⁶ The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

²⁶ Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.²⁷ Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided

²⁷ See NYSE Arca Equities Rule 7.12, Commentary .04.

in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Surveillance

The Exchange represents that 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.²⁸ 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 applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁹ Except for up to 10% of ADRs, which may be unsponsored, the Fund will invest only in equity securities (including financial instruments that

²⁸ 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.

²⁹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

are linked to the performance of foreign issuers),³⁰ ETPs and BDCs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin (“Bulletin”) of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its Equity Trading Permit Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that Equity Trading Permit Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange

³⁰ See note 11, supra, and accompanying text.

Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)³¹ 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. Except for up to 10% of ADRs, which may be unsponsored, the Fund will invest only in equity securities (including financial instruments that are linked to the performance of foreign issuers),³² ETPs and BDCs that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange. The Exchange 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. The Adviser is not affiliated with a broker-dealer. In the event the Sub-Adviser is affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to

³¹ 15 U.S.C. 78f(b)(5).

³² See note 11, supra, and accompanying text.

procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Fund may not purchase or hold illiquid securities if, in the aggregate, more than 15% of its net assets would be invested in illiquid securities. The Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. 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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Information regarding the equity securities, debt securities, fixed income instruments, and other investments held by the Fund will be available from the U.S. and non U.S. securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's website will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund's website will disclose the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Fund's website will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if

applicable), name of security and financial instrument, number of shares and dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. 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 will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will 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 in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. 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 noted above, investors will 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.

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 Exchange Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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

- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-NYSEArca-2013-33 on the subject line.

Paper comments:

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

All submissions should refer to File No. SR-NYSEArca-2013-33. 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 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 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 No. SR-NYSEArca-2013-33 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.³³

Kevin M. O'Neill
Deputy Secretary

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³³ 17 CFR 200.30-3(a)(12).