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SECURITIES AND EXCHANGE COMMISSION
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August 21, 2014

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares Under NYSE Arca Equities Rule 8.600

I. Introduction

On June 20, 2014, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade the following shares (collectively, “Shares”) of the funds (each a “Fund” and collectively, the “Funds”) under NYSE Arca Equities Rule 8.600: the WBI SMID Tactical Growth Shares; WBI SMID Tactical Value Shares; WBI SMID Tactical Yield Shares; WBI SMID Tactical Select Shares; WBI Large Cap Tactical Growth Shares; WBI Large Cap Tactical Value Shares; WBI Large Cap Tactical Yield Shares; WBI Large Cap Tactical Select Shares; WBI Tactical Income Shares; and WBI Tactical High Income Shares. On July 1, 2014, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the Federal Register on July 9, 2014.⁴ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 72526 (July 2, 2014), 79 FR 39035 (“Notice”).

II. Description of the Proposal⁵

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.⁶ The Shares will be offered by Absolute Shares Trust (“Trust”),⁷ a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company. Millington Securities, Inc. will be the investment adviser for each Fund (“Adviser”) and WBI Investments, Inc. will be the sub-adviser to each Fund (“Sub-Adviser”).⁸ The

⁵ Additional information regarding the Funds; Shares; investment objectives; strategies; methodology and restrictions; risks; fees and expenses; creations and redemptions of Shares; availability of information; trading rules and halts; and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice. See Notice, supra note 4, and Registration Statement, infra note 7, respectively.

⁶ 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), as amended (“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.

⁷ The Trust is registered under the 1940 Act. On February 28, 2014, the Trust filed with the Commission an amended registration statement on Form N-1A relating to the Funds (File Nos. 333-192733 and 811-22917) (the “Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Adviser and the actively managed exchange-traded trusts it advises, including the Trust, under the 1940 Act. See Investment Company Act Release No. 30543 (May 29, 2013) (File No. 812-13886) (the “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”). The Adviser is wholly owned by WBI Trading Company, Inc., and the Sub-Adviser is an affiliate of WBI Trading Company. See Notice, supra note 4, 79 FR at 39035, n.8. The Adviser and the Sub-Adviser are each registered as an investment adviser under the Advisers Act. As a result, the Adviser, the 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

Exchange states that the Adviser is a registered broker-dealer and is affiliated with a broker-dealer, and that the Sub-Adviser is also affiliated with a broker-dealer.⁹ The Exchange represents that the Adviser and Sub-Adviser will implement a firewall with respect to their relevant personnel and their broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.¹⁰ U.S. Bank, National Association will be the administrator, custodian, transfer agent and securities lending agent for each Fund. Foreside Fund Services, LLC will be the distributor for the Funds.

A. Common Fund Strategy and Characteristics

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, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 206(4)-7 under the Advisers Act, which makes it unlawful for an investment 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.

⁹ See id. at 39036.

¹⁰ See id. The Exchange also states that, in the event that (a) the Adviser and/or Sub-Adviser become newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a firewall with respect to such relevant personnel and/or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. See id.

Each Fund will be an actively-managed exchange-traded fund (“ETF”) and will not seek to replicate the performance of a specified index. Each Fund will, under normal market conditions,¹¹ invest at least 80% of its net assets in securities according to its individual principal investment strategies as described below. Additionally, certain Funds may use American depositary receipts (“ADR”), European depositary receipts (“EDR”) and global depositary receipts (“GDR”) (collectively, “Depositary Receipts”) when, in the discretion of the Sub-Adviser, the use of such securities is warranted for liquidity, pricing, timing or other reasons. No Fund will invest more than 10% of its net assets in unsponsored Depositary Receipts. Each Fund that invests primarily in equities as described further below also may invest up to 20% of its principal investment assets in high-yield bonds (also known as “junk bonds”).

B. Individual Fund Investments

1. WBI SMID Tactical Growth Shares

¹¹ The term “under normal market conditions” or “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 fixed income 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. However, each Fund may temporarily depart from its principal investment strategy by making short-term investments in cash, cash equivalents, high-quality short-term debt securities, and money market instruments for temporary defensive purposes in response to adverse market, economic or political conditions. According to the Exchange, each Fund may acquire the following short-term investments: (1) certificates of deposit issued by commercial banks as well as savings banks or savings and loan associations; (2) bankers’ acceptances; (3) time deposits; and (4) commercial paper and short term notes rated at the time of purchase “A-2” or higher by Standard & Poor’s®, “Prime-1” by Moody’s® Investors Service, Inc., or similarly rated by another nationally recognized statistical rating organization or, if unrated, will be determined by the Sub-Adviser to be of comparable quality, as well as U.S. Government obligations.

According to the Exchange, the WBI SMID Tactical Growth Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies.¹² The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, master limited partnerships (exchange-traded businesses organized as partnerships (“MLPs”)), and exchange-traded real estate investment trusts (“REITs”). The Fund may invest up to 50% of the Fund’s principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund’s principal investments also may consist of ETFs¹³ that invest predominantly in small-

¹² Each Fund will generally invest in 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 each Fund, not more than 10% of the net assets invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Furthermore, for each Fund not more than 10% of the net assets invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. See id. at 39037, n.11.

¹³ ETFs include Investment Company Units (NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depositary Receipts (NYSE Arca Equities Rule 8.100); and Managed Fund Shares (NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. The ETFs in which a Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While each Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs. See id. at 39037, n.12.

capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets as described above, the Fund may directly invest in certain other investments. According to the Exchange, to enhance the Fund's returns or to mitigate risk and volatility, the Fund may invest up to 20% of the Fund's net assets in large-capitalization equities; domestic and foreign debt securities (including junk bonds); ETFs (other than ETFs noted in the Principal Investment section for the Fund, above, that invest predominantly in small-capitalization and mid-capitalization equity securities); and/or exchange-traded or over-the-counter ("OTC") options overlying: exchange listed equity indices; and futures on debt, interest rates, and currencies ("Options Strategies").¹⁴

The Fund may invest in the following types of debt securities: fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in agency and non-agency residential mortgage-backed securities ("RMBS") and asset-backed securities.¹⁵ The Fund also may invest in debt-based exchange-traded notes ("ETNs").¹⁶ The Fund expects to invest in debt securities of all maturities, from less than one

¹⁴ See id. at 39037.

¹⁵ "Non-agency" securities are financial instruments that have been issued by an entity that is not a government-sponsored agency, such as the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal Home Loan Banks, or the Government National Mortgage Association ("Ginnie Mae").

¹⁶ See id. ETNs are debt obligations of investment banks which are traded on exchanges and the returns of which are linked to the performance of market indexes and include securities listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(6)

year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve. According to the Exchange, the yield curve refers to the differences in yield among debt assets of varying maturities.

In addition, the Fund may utilize equity options for individual securities including writing (selling) covered calls, buying puts, using combinations of calls and puts, using combinations of calls and combinations of puts, and entering into cap and floor agreements.¹⁷ The Fund also may use Options Strategies.

The Fund also may enter into the following types of financial instruments: futures overlying equity indexes, interest rates, debt instruments, and currencies; government debt repurchase agreements; depository receipt conversion swaps¹⁸ into and out of the underlying stock; and forward contracts on currencies (collectively, the "Financial Instruments").¹⁹ Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

2. WBI SMID Tactical Value Shares

According to the Exchange, the WBI SMID Tactical Value Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

("Index-Linked Securities"). In addition to trading ETNs on exchanges, investors may redeem ETNs directly with the issuer on a weekly basis, typically in a minimum amount of 50,000 units, or hold the ETNs until maturity.

¹⁷ The Exchange describes cap and floor agreements in the Notice. See id. at 39037, n.16.

¹⁸ The Exchange describes depository receipt conversion swap in the Notice. See id. at 39037, n.18.

¹⁹ See id. at 39037.

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. According to the Registration Statement, the Fund may invest up to 20% of its net assets in large-capitalization equities, domestic and foreign debt securities (including junk bonds), ETFs (other than ETFs noted in the Principal Investments section for the Fund, above, that invest predominantly in small-capitalization and mid-capitalization equity securities), and/or in Options Strategies to enhance the Fund's returns or to mitigate risk and volatility. The Fund also may use Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund

also may invest in debt-based ETNs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

3. WBI SMID Tactical Yield Shares

According to the Exchange, the WBI SMID Tactical Yield Share will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed dividend-paying equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar-denominated foreign securities and foreign equity securities. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. According to the Registration Statement, the Fund may invest up to 20% of the Fund's net assets in large-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in

Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

4. WBI SMID Tactical Select Shares

According to the Exchange, the WBI SMID Tactical Select Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of small-capitalization and mid-capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund also may invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities

and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. The Fund may invest up to 20% of the Fund's net assets in large-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

5. WBI Large Cap Tactical Growth Shares

According to the Exchange, the WBI Large Cap Tactical Growth Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common

stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. Namely, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

6. WBI Large Cap Tactical Value Shares

According to the Exchange, the WBI Large Cap Tactical Value Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund also may invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. Specifically, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

7. WBI Large Cap Tactical Yield Shares

According to the Exchange, the WBI Large Cap Tactical Yield Shares will seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed dividend-paying equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund also may invest up to 20% of the Fund's principal investments in high-yield bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. Namely, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, high-yield bonds and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

8. WBI Large Cap Tactical Select Shares

According to the Registration Statement, the WBI Large Cap Tactical Select Shares objectives are to seek long-term capital appreciation and the potential for current income, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in the exchange-listed equity securities of large capitalization domestic and foreign companies selected by the Sub-Adviser. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign

equity securities. The Fund also may invest up to 20% of the Fund's principal investments in junk bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in small-capitalization and mid-capitalization equity securities and will be considered small-capitalization and mid-capitalization equity securities for purposes of the Fund's equity allocation target.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. Namely, up to 20% of the Fund's net assets may be invested in small-capitalization and mid-capitalization equities, domestic and foreign debt securities, and high-yield bonds and/or in Options Strategies described above and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

The types of debt securities in which the Fund will invest are fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, and high-yield bonds. The Fund also may invest in debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

9. WBI Tactical Income Shares

According to the Exchange, the WBI Tactical Income Shares objectives are to seek current income with the potential for long-term capital appreciation, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in income producing debt and exchange listed equity securities of foreign and domestic issuers, including the securities of foreign and domestic corporate and governmental entities selected by the Sub-Adviser. The types of debt securities in which the Fund will invest are corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, high- yield bonds and variable and floating rate securities. The Fund also may invest in debt-based ETNs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve. The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles MLPs, and REITs. The Fund may invest in companies of any size market capitalization.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund also may invest up to 40% of the Fund's principal investments in junk bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in debt securities and will be considered debt securities for the purposes of the Fund's debt target allocation and investments in other investment companies that invest predominantly in dividend-paying equity securities are considered dividend-paying equity securities for the purposes of the fund's income producing securities target allocation.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments.

Namely, up to 20% of the Fund's net assets may be invested in exchange listed foreign and domestic equities (other than the foreign and domestic equities noted in the Principal Investment section for the Fund, above), ETFs, ETNs (other than the debt-based ETFs and ETNs noted in the Principal Investment section for the Fund, above), and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

10. WBI Tactical High Income Shares

According to the Exchange, the WBI Tactical High Income Shares investment objectives are to seek high current income with the potential for long-term capital appreciation, while also seeking to protect principal during unfavorable market conditions.

a. Principal Investments

Under normal market conditions, the Fund will invest at least 80% of its net assets in income producing debt and exchange listed equity securities of foreign and domestic issuers, including the securities of foreign and domestic corporate and governmental entities selected by the Sub-Adviser.

The types of debt securities in which the Fund will invest are corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities, high-yield bonds, variable and floating rate securities, and debt-based ETNs and ETFs. The Fund expects to invest in debt securities of all maturities, from less than one year up to thirty years, depending on the portfolio manager's assessment of the risks and opportunities along the yield curve.

The types of equity securities in which the Fund will invest are common stocks, preferred stocks, rights, warrants, convertibles, MLPs, and REITs. The Fund may invest in companies of

any size market capitalization.

The Fund may invest up to 50% of the Fund's principal investments in the securities of issuers in emerging markets, which could consist of Depositary Receipts, dollar denominated foreign securities and foreign equity securities. The Fund also may invest up to 80% of the Fund's principal investments in junk bonds. The Fund's principal investments also may consist of ETFs that invest predominantly in debt securities and will be considered debt securities for the purposes of the Fund's debt target allocation and investments in other investment companies that invest predominantly in dividend-paying equity securities are considered dividend-paying equity securities for the purposes of the fund's income producing securities target allocation.

b. Non-Principal Investments

While the Fund, under normal circumstances, will invest at least 80% of its net assets in its investments as described above, the Fund may directly invest in certain other investments. According to the Exchange, up to 20% of the Fund's net assets may be invested in exchange listed foreign and domestic equities (other than the foreign and domestic equities noted in the Principal Investment section for the Fund, above), ETFs, ETNs (other than the debt-based ETFs and ETNs noted in the Principal Investment section for the Fund, above), and/or in Options Strategies and Financial Instruments. Cash balances arising from the use of Financial Instruments typically will be held in money market instruments.

C. Investment Restrictions

Each Fund will seek to qualify for treatment as a regulated investment company ("RIC") under Subchapter M of the Internal Revenue Code of 1986, as amended.²⁰

²⁰ 26 U.S.C. 851.

A Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), including Rule 144A securities. The Funds will monitor their portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities and other illiquid assets.

A Fund will not invest more than 25% of its total assets, directly or indirectly, through underlying ETFs, in an individual industry, as defined by the Standard Industrial Classification Codes utilized by the Division of Corporate Finance of the Commission.²¹ This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or investments in shares of investment companies.

According to the Exchange, a Fund may not purchase or sell physical commodities or physical commodity contracts unless acquired as a result of ownership of securities or other instruments issued by persons that purchase or sell commodities or commodities contracts, but this shall not prevent a Fund from purchasing, selling and entering into financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), options on financial futures contracts (including futures contracts on indices of securities, interest rates and currencies), warrants, swaps, forward contracts, or other derivative instruments that are not related to physical commodities.

²¹ See Form N-1A, Item 5. 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).

No Fund will invest more than 10% of its net assets in unsponsored Depositary Receipts. For each Fund, not more than 10% of the net assets invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. Further, for each Fund, not more than 10% of the net assets invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

No Fund will invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²³ which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

²² In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78f(b)(5).

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²⁴ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares and underlying domestic exchange listed equities securities, including common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS, will be available via the Consolidated Tape Association high-speed line and from the national securities exchange on which they are listed. Quotation and last-sale information for domestic exchange-listed options contracts will be available via the Options Price Reporting Authority.

Quotation information for unsponsored Depositary Receipts will be available from major market data vendors. Quotation information for non-exchange-traded derivatives, including OTC options, forwards, and swaps may be obtained from brokers and dealers who make markets in such securities or major market data vendors. Price information on futures and options on futures will be available from major market data vendors and from securities and futures exchanges, as applicable.

Quotation information for debt securities, including fixed, floating and variable corporate debt securities, U.S. Government securities, debt securities of foreign issuers, sovereign debt securities, U.S. government agency securities and high-yield bonds, will be available from major market data vendors. In addition, quotation information from brokers and dealers or major market data vendors will be available for mortgage-backed; asset-backed securities; money

²⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

market instruments; short-term debt securities; and Financial Instruments. 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. Price information regarding equity securities and options traded on non-U.S. securities exchanges will be available from the exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. On each business day, before commencement of trading in Shares in the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the Exchange, each Fund will disclose on its website the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for a Fund's calculation of NAV at the end of the business day.²⁵ The website information will be publicly available at no charge. The NAV of a Fund will be determined once each Business Day, normally as of the close of trading on the NYSE (normally, 4:00 p.m. E.T.). 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.²⁶ The

²⁵ Under accounting procedures followed by each Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, each 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.

²⁶ See Notice, supra note 4, 79 FR at 39044.

Intraday Indicative Value (“IIV”) will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.²⁷ The website for each Fund will include a form of the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information.²⁸

The Exchange represents that trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached.²⁹ 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,³⁰ and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), each Fund’s Reporting Authority 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 each Fund’s portfolio.³¹

The Exchange states that the Adviser is a registered broker-dealer and is affiliated with a broker-dealer, and that the Sub-Adviser is also affiliated with a broker-dealer. The Exchange represents that the Adviser and Sub-Adviser will implement a firewall with respect to their

²⁷ The IIV is the same as the Portfolio Indicative Value as defined in NYSE Arca Equities Rule 8.600(c)(3). See id. at 39042.

²⁸ See id. at 39043.

²⁹ See id. at 39044.

³⁰ 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 a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. See id.

³¹ See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

relevant personnel and their broker-dealer affiliates regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices with markets and entities that are members of ISG, and FINRA may obtain, on behalf of the Exchange, trading information regarding trading in the Shares, underlying exchange-traded equity securities, exchange-traded options, futures, options on futures contracts and options on securities indices from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying exchange-traded equity securities (including, without limitation, domestic and foreign common stocks, preferred stocks, rights, warrants, convertibles, Depositary Receipts, ETFs, ETNs, MLPs and REITS), exchange-traded options, futures, options on futures contracts and options on securities indices from markets and entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³²

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. In support of this proposal, the Exchange represented that:

³² For a list of the current members of ISG, see www.isgportal.org.

- (1) The Shares will conform to the initial and continuing listing criteria under NYSE Arca Equities Rule 8.600.
- (2) Trading in the Shares will be subject to the existing trading surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to detect and help deter violations of Exchange rules and applicable federal securities laws.
- (3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (“ETP Holders”) in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (d) how information regarding the IIV is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

- (5) For initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act,³³ as provided by NYSE Arca Equities Rule 5.3.
- (6) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including Rule 144A securities.
- (7) Un-sponsored Depository Receipts will not exceed 10% of a Fund's net assets.
- (8) For each Fund, not more than 10% of the net assets invested in exchange-traded equity securities shall consist of equity securities whose principal market is not a member of the ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (9) For each Fund, not more than 10% of the net assets invested in futures contracts or options contracts shall consist of futures contracts or options contracts whose principal market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (10) No Fund will invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X, or -3X) ETFs.
- (11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's descriptions of the Funds. For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act³⁴ and the rules and regulations thereunder applicable to a national securities exchange.

³³ 17 CFR 240.10A-3.

³⁴ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³⁵ that the proposed rule change (SR-NYSEArca-2014-67), as modified by Amendment No. 1, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Kevin O'Neill
Deputy Secretary

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³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).