SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator IBD® 50 Fund Under NYSE Arca Equities Rule 8.600

March 27, 2015.

On January 30, 2015, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) \(^1\) and Rule 19b–4 thereunder, \(^2\) a proposed rule change to list and trade shares (“Shares”) of the Innovator IBD® 50 Fund (“Fund”). On February 12, 2015,

1. 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 on the Exchange. The Shares will be offered by Academy Funds Trust (the “Trust”), an open-end management investment company. \(^3\) The Fund will issue and sell Shares only in “Creation Unit” size at the NAV next determined after receipt, on any business day, of an order in proper form. \(^4\)

The investment adviser to the Fund will be Innovator Management LLC (the “Adviser”). Penserra Capital Management LLC will be the Fund’s sub-adviser (“Sub-Adviser”). Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer. The Adviser is not affiliated with a broker-dealer. The Sub-Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund’s portfolio. \(^6\)

2  The Trust is registered under the Act. On October 9, 2014 and on December 19, 2014, the Trust filed with the Commission amendments to its registration statement under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) (the “Act”) and under the Act relating to the Fund (File Nos. 333–146827 and 811–22135) (“Registration Statement”). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Act. See Investment Company Act Release No. 31248 (September 9, 2013) (File No. 812–14308) (“Exemptive Order”).
3  A Creation Unit consists of 25,000 Shares, and the size of a Creation Unit is subject to change. See Notice, supra note 3, 80 FR at 9296.
4  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 to Rule 8.600 provides 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 non-public information regarding the open-end fund’s portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(b)(i); 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 Exchange states that, in the event (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.
5  The term “under normal circumstances” means, without limitation, the absence of extreme volatility or trading hals 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.
6  The Exchange is a member of an index published by Investor’s Business Daily® (“IBD”). IBD® uses proprietary fundamental and technical ratings to compile what the Exchange considers the 50 leading growth companies that trade on U.S. national securities exchanges. Companies included in the Index must meet minimum earnings, sales, profit margin, volume and technical requirements.
The Exchange represents that intra-day and closing price information relating to the investments of the Fund will be available from major market data vendors and from securities exchanges, as applicable.14 Further, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), based on current information regarding the value of the securities and other assets in the Disclosed Portfolio, will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.12 The Custodian, through the National Securities Clearing Corporation ("NSCC") will make available on each business day, prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern time), the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit13 (based on information at the end of the previous business day) for the Fund.14 In addition, a basket composition file, which includes the security names and share quantities (as applicable) required to be delivered in exchange for Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC.15 The NAV of the Fund will be calculated at the close of regular trading (ordinarily 4:00 p.m. Eastern time) every day the New York Stock Exchange is open for trading.16 Information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services.17 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.18

The Commission further 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. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share of the Fund will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, trading in the Shares would be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.19 Further, the Commission notes that the Adviser, as the Reporting Authority, that provides the Disclosed Portfolio must 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.20 In addition, the Exchange may obtain information regarding trading in the Shares and underlying exchange-traded equity securities from markets and other entities that are members of Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement.21 The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers. The Exchange represents that the Sub-Adviser is a registered broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of or changes to the Fund’s portfolio.22

10In 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).
11See Notice, supra note 3, 80 FR at 9298.
12See Notice, supra note 3, 80 FR at 9298.
13See Notice, supra note 3, 80 FR at 9297.
14See id. at 9297.
15See id.
16See id.
17See id.
18See id.
19See id.
21For 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.
22The Exchange also represents that, in the event that (a) the Adviser or the Sub-Adviser becomes a registered broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or any sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund’s portfolio, and will be subject
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. Additionally, in support of its proposal, the Exchange has made the following representations:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) 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.

(4) Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in the Shares and underlying exchange-traded equity securities with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, may obtain trading information regarding trading in the Shares, underlying exchange-traded equity securities, from such markets and other entities.

(5) 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.

(6) The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act, as provided by NYSE Arca Equities Rule 5.3.

(7) The Fund may hold up to an aggregate amount of 15% of its net assets (calculated at the time of investment) in assets deemed illiquid by the Adviser, consistent with Commission guidance.

(8) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

(9) Not more than 10% of the net assets of the Fund in the aggregate 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.

(10) The Fund will not invest in options, futures contracts or swaps agreements.

(11) The Fund will not invest in leveraged or inverse leveraged (e.g., 2X, 3X or –3X) ETFs.

This approval order is based on all of the Exchange’s representations and description of the Funds.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2015–04), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.24

Brent J. Fields,
Secretary.

BILLS AND EXCHANGE COMMISSION


Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees for the BATS One Market Data Product

March 27, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),1 and Rule 19b–4 thereunder,2 notice is hereby given that on March 17, 2015, EDGA Exchange, Inc. (the “Exchange” or “EDGA”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder,3 which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the market data section of its fee schedule to: (i) Establish a Digital Media Enterprise Fee for the BATS One Feed; and (ii) make a non-substantive change to the description of the BATS One Feed Enterprise fee. The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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 these statements may be examined at the places specified in Item IV below. The