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 OCC and on OCC’s website at https://www.theocc.com/about/publications/bylaws.jsp.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–OCC–2018–007 and should be submitted on or before June 15, 2018.

IV. Approval of Proposed Rule Change, as Modified by Amendment No. 1

As discussed above, OCC submitted Amendment No. 1 to accurately reflect existing Rule 2202(c), which would not be affected by the proposed rule change. The Commission believes that Amendment No. 1 does not raise any novel issues or alter the proposed changes in any way. In addition, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Act and applicable rules thereunder for the reasons discussed above. Accordingly, the Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1 pursuant to Section 19(b)(2) of the Act.48

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act49 and Rule 17Ad–22(e)(1) thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–OCC–2018–007) be, and it hereby is, approved.


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).


* * *

1 The Trust is registered under the 1940 Act. On November 1, 2017, the Trust filed with the Commission an amendment to its registration thereunder.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Fund, under NYSE Arca Rule 8.600–E(1)(3) (formerly NYSE Arca Equities Rule 8.600), which governs the listing and trading of Managed Fund Shares. The Fund’s Shares are currently listed and traded on the Exchange under NYSE Arca Rule 8.600–E. The Shares are offered by AdvisorShares Trust (“Trust”).

* * *
The Trust has filed a combined prospectus and proxy statement (the “Proxy Statement”) with the Commission on Form N–14A describing a “Plan of Reorganization” pursuant to which, following approval of the Fund’s shareholders, all or substantially all of the assets and all of the stated liabilities included in the financial statements of the Fund would be transferred to a new series of Exchange Listed Funds Trust, described below. According to the Proxy Statement, the investment objective of the Fund will be the same following implementation of the Plan of Reorganization (“Reorganization”). Following shareholder approval and closing of the Reorganization, investors will receive shares of beneficial interest of such new series of Exchange Listed Funds Trust and cash with respect to any fractional shares held, if any, with an aggregate net asset value equal to the aggregate net asset value of the Shares of the Fund of the Trust calculated as of the close of business on the business day before the closing of the Reorganization. The name of the Fund will remain unchanged.

In this proposed rule change, the Exchange proposes to change certain representations made in the proposed rule changes previously filed with the Commission pursuant to Rule 19b-4 relating to the Fund, as described above, changes that would be implemented as a result of the Plan of Reorganization.

Peritus High Yield ETF

The Notice stated that the Fund is offered by AdvisorShares Trust. Following the Reorganization, the Fund’s trust will be Exchange Listed Funds Trust. The Fund’s investment adviser is AdvisorShares Investments, LLC. Following the Reorganization, the Fund’s investment adviser will be Exchange Traded Concepts, LLC. The Fund’s sub-adviser, Peritus I Asset Management, LLC, will remain the sub-adviser for the Fund following the Reorganization.

The investment objective of the Fund will remain unchanged. In addition, the Fund’s portfolio meets and will continue to meet the representations regarding the Fund’s investments as described in the Releases.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) 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, 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.

Peritus I Asset Management, LLC becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such 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. In addition, personnel who make decisions on the Fund’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. 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, with respect to the Fund, Exchange Traded Concepts, LLC, the new sub-adviser to the Fund, and Peritus I Asset Management, LLC, as adviser and sub-adviser, respectively, 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 2004-7 under the Advisers Act 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) reviewed, 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.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change will enhance competition and benefit of investors and the marketplace by permitting continued listing and trading of Shares of the Fund following implementation of the changes described above that would follow the Reorganization, which changes would not impact the investment objective of the Fund.
G. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others.

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act 12 and Rule 19b−4(f)(6) thereunder.13

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule may become operative immediately upon filing. Because the vote on the Reorganization will occur before the end of the operative delay, waiver of the operative delay would allow the Exchange to begin implementing the two organizational and administrative changes described above to immediately upon shareholder approval of the Reorganization. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.14

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 email to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2018–35 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–NYSEArca–2018–35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2018–35 and should be submitted on or before June 21, 2018.

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

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018–11610 Filed 5–30–18; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Nasdaq PHXL LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Risk Protections

May 24, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),1 and Rule 19b−4 thereunder,2 notice is hereby given that on May 16, 2018, Nasdaq PHXL LLC (“Phlx” or “Exchange”) 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 1095, entitled “Automated Removal of Quotes” and Rule 1099, entitled “Order Protections.”

The text of the proposed rule change is available on the Exchange’s website at http://nasdaqphlx.chiwallstreet.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 Exchange has prepared summaries, set forth in sections A, B, and C below, of