

with a member, provide an opportunity to defend against such charges, keep a record, and provide details regarding the findings and applicable sanctions in the event a determination to impose a disciplinary sanction is made. The Exchange believes that each of these requirements is addressed by the notice and due process provisions included within proposed Rule 9400. Importantly, as noted above, the Exchange will use the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Members and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings.

#### *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 not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that each self-regulatory organization should be empowered to regulate trading occurring on their [sic] market consistent with the Act and without regard to competitive issues. The Exchange is requesting authority to take appropriate action if necessary for the protection of investors, other Members and the Exchange. The Exchange also believes that it is important for all exchanges to be able to take similar action to enforce its [sic] rules against manipulative conduct thereby leaving no exchange prey to such conduct.

The Exchange does not believe that the proposed rule change imposes an undue burden on competition, rather this process will provide the Exchange with the necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Members with the necessary due process.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on

which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>19</sup>

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-NASDAQ-2016-074 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 No. SR-NASDAQ-2016-074. 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 Web site (<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

<sup>18</sup> 15 U.S.C. 78s(b)(3)(a)(iii).

<sup>19</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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; 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-NASDAQ-2016-074, and should be submitted on or before June 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Brent J. Fields,**  
*Secretary.*

[FR Doc. 2016-12775 Filed 5-31-16; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-77920; File No. SR-NYSEArca-2016-46]**

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the AdvisorShares Cornerstone Small Cap ETF Under NYSE Arca Equities Rule 8.600**

May 25, 2016.

#### **I. Introduction**

On March 28, 2016, NYSE Arca, Inc. ("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 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the AdvisorShares Cornerstone Small Cap ETF ("Fund"), which will be offered by the AdvisorShares Trust ("Trust"). The proposed rule change was published for comment in the **Federal Register** on April 15, 2016.<sup>3</sup> On May 4, 2016, the Exchange filed Amendment No. 1 to the

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 77576 (April 11, 2016), 81 FR 22337.

proposed rule change.<sup>4</sup> On May 19, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>5</sup> The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

## II. The Exchange's Description of the Proposal

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 the Trust, which is registered with the Commission as an open-end investment company.<sup>6</sup> AdvisorShares Investments LLC will be the investment adviser ("Adviser") to the Fund. Cornerstone Investment Partners will be the Fund's sub-adviser ("Sub-Adviser").<sup>7</sup> Foreside Fund Services, LLC will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon will serve as the administrator,

<sup>4</sup> Amendment No. 1 replaced the original filing in its entirety.

<sup>5</sup> In Amendment No. 2, which replaced Amendment No. 1 in its entirety, the Exchange: (1) Clarified the Fund's investment objective; (2) clarified how OTC ADRs (as defined herein) will be valued for computing the Fund's net asset value ("NAV"); (3) clarified where price information can be obtained for OTC ADRs; (4) specified the cutoff time for creation and redemption orders; (5) amended certain surveillance representations; and (6) made other technical amendments. Amendment No. 2 is available at <http://www.sec.gov/comments/sr-nysearca-2016-46/nysearca201646-2.pdf>. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

<sup>6</sup> The Exchange represents that the Trust is registered under the 1940 Act. According to the Exchange, on January 26, 2016, the Trust filed with the Commission amendments to its registration statement on Form N-1A under the Securities Act of 1933 and under the Investment Company Act of 1940 ("1940 Act") relating to the Fund (File Nos. 333-157876 and 811-22110) ("Registration Statement"). In addition, the Exchange states that 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).

<sup>7</sup> The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, and neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. 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.

custodian, and transfer agent for the Fund.<sup>8</sup>

### A. The Fund's Principal Investments

According to the Exchange, the investment objective of the Fund will be to seek to provide total return through long-term capital appreciation and current income. Under normal circumstances,<sup>9</sup> the Fund will invest at least 80% of its net assets (plus any borrowings for investment purposes) in common stocks of small cap companies traded on a U.S. or foreign exchange or over-the-counter ("OTC").<sup>10</sup>

### B. The Fund's Other Investments

According to the Exchange, while the Fund, under normal circumstances, will invest at least 80% of its assets in the securities described in the Principal Investments section above, the Fund may invest its remaining assets in the securities and financial instruments described below.

In addition to the common stocks of small cap companies referenced in the Principal Investments section above, the Fund may invest in the following equity securities traded on a U.S. or foreign exchange or OTC: Common stocks, preferred stocks, rights, warrants, convertible securities, and master limited partnerships ("MLPs"). The

<sup>8</sup> Additional information regarding the Trust, the Fund, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 2 and the Registration Statement, as applicable. See Amendment No. 2, *supra* note 5, and Registration Statement, *supra* note 6.

<sup>9</sup> The term "under normal circumstances" means, without limitation, the absence of 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.

<sup>10</sup> The Exchange states that the Sub-Adviser generally defines a small cap company as one having a market capitalization less than the market cap of the largest company in the Russell 2000 Index ("Index") at the time of acquisition. The Exchange states that the Sub-Adviser will create an investable universe of 1,800 companies for the Fund similar to the components of the Index, but excluding the smallest 200 market capitalization securities in the Index. The Sub-Adviser generally intends to select stocks that satisfy three basic criteria: (1) Analysts have positively revised their forward looking estimates of the company's profitability and the company has generated earnings in excess of analyst expectations; (2) balance sheet strength; and (3) financial flexibility, as determined by measuring a company's ability to meet debt and capital expenditure requirements. Sector weights will be constrained relative to Index sector weights and will be determined by the relative attractiveness of the specific sector. Securities will be targeted to be equally weighted within the sectors, but may shift with price movements.

Fund may invest in issuers located outside the United States directly, or in exchange-traded funds ("ETFs")<sup>11</sup> or exchange-traded notes ("ETNs")<sup>12</sup> that are indirectly linked to the performance of foreign issuers; or in "Depository Receipts," which are the following: American Depository Receipts ("ADRs"),<sup>13</sup> Global Depository Receipts, European Depository Receipts, International Depository Receipts, "ordinary shares," and "New York shares."<sup>14</sup>

The Fund may invest in the securities of other investment companies to the extent that such an investment would be 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. Consistent with such restrictions discussed above, the Fund may invest in U.S. exchange-listed closed-end funds and business development companies ("BDCs"). Except with respect to ETFs, as described above,<sup>15</sup> the Fund will not invest in inverse, leveraged, or inverse leveraged investment company securities.

The Fund may invest in the securities of exchange-traded pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act.<sup>16</sup> These

<sup>11</sup> For purposes of this filing, ETFs are Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Portfolio Depository Receipts (as described in NYSE Arca Equities Rule 8.100); and Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600). The ETFs all will be listed and traded in the U.S. on registered exchanges. The Fund will invest in the securities of ETFs 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 ETF investments in conformity with the requirements of Regulation M of the Internal Revenue Code of 1986, as amended. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs.

<sup>12</sup> For purposes of this filing, ETNs include Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)). While the Fund may invest in inverse ETNs, the Fund will not invest in leveraged or inverse leveraged ETNs.

<sup>13</sup> According to the Exchange, no more than 10% of the Fund's net assets will be invested in non-exchange-listed ADRs.

<sup>14</sup> With respect to the Fund's investments in the equity securities of foreign issuers, the Fund may invest in the equity securities of foreign issuers in emerging countries.

<sup>15</sup> See *supra* note 11.

<sup>16</sup> For purposes of this filing, "exchange-traded pooled vehicles" consist of Equity Gold Shares (as described in NYSE Arca Equities Rule 5.2(j)(5)); 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); and Commodity Futures Trust Shares

pooled vehicles typically hold commodities, such as gold or oil, currency, or other property that is itself not a security.

The Fund may invest in shares of real estate investment trusts (“REITs”) that are U.S. exchange-listed.

The Fund may enter into repurchase agreements and reverse repurchase agreements.

The Fund may invest in U.S. government securities, which include U.S. Treasury securities, U.S. Treasury bills, U.S. Treasury notes, and U.S. Treasury bonds. The Fund may also invest in certain U.S. government securities that are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Government National Mortgage Association.

The Fund may invest in U.S. exchange-traded equity options, U.S. exchange-traded index options, and U.S. exchange-traded stock index futures contracts, all of which are traded in markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund may invest in U.S. exchange-traded “passive foreign investment companies” (“PFICs”).

The Fund, from time to time, in the ordinary course of business, may purchase securities on a when-issued, delayed-delivery, or forward commitment basis.

According to the Exchange, to respond to adverse market, economic, political, or other conditions, the Fund may invest up to 100% of its total assets, without limitation, in high-quality, short-term debt securities and money market instruments either directly or through ETFs. The Fund may be invested in this manner for extended periods, depending on the Sub-Adviser’s assessment of market conditions. Debt securities and money market instruments are the following: Shares of mutual funds, commercial paper, certificates of deposit, bankers’ acceptances, U.S. government securities, repurchase agreements, and bonds that are rated BBB or higher.

(as described in NYSE Arca Equities Rule 8.204). The exchange-traded pooled vehicles all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse exchange-traded pooled vehicles, the Fund will not invest in leveraged or inverse leveraged exchange-traded pooled vehicles.

### C. The Fund’s Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.<sup>17</sup> 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 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 invested in illiquid assets.

The Fund will be classified as a diversified investment company under the 1940 Act.

The Fund intends to qualify as a “regulated investment company” for purposes of the Internal Revenue Code of 1986.

The Fund will not:

(a) With respect to 75% of its total assets, (i) 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;

(b) 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. 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. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

The Fund’s investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund’s investments will not be used to seek performance that is the multiple or inverse multiple of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).

### 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

<sup>17</sup> In determining the liquidity of the Fund’s investments, the Adviser may consider various factors, including: The frequency and volume of trades and quotations; the number of dealers and prospective purchasers in the marketplace; dealer undertakings to make a market; and the nature of the security and the market in which it trades.

the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>18</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,<sup>19</sup> which requires, among other things, that the Exchange’s rules be 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 a national market system, and, in general, to protect investors and the public interest.

The Commission also 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,<sup>20</sup> which sets forth Congress’s 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.

According to the Exchange, quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line, and 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. 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.

In addition, 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,<sup>21</sup> will be widely disseminated at least every 15 seconds during the Core Trading Session<sup>22</sup> by one or more major market data vendors.<sup>23</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the

<sup>18</sup> 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).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>20</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>21</sup> The term “Disclosed Portfolio” is defined in NYSE Arca Equities Rule 8.600(c)(2).

<sup>22</sup> The term “Core Trading Session” is defined in NYSE Arca Equities Rule 7.34(a)(2).

<sup>23</sup> According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>24</sup> The Fund's Web site will also include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis.

Quotation and last-sale information for U.S. exchange-listed equity securities, including common stocks, ETFs, ETNs, exchange-traded pooled vehicles, preferred stocks, rights, warrants, convertible securities, closed-end funds, MLPs, REITs, BDCs, PFICs, and certain Depositary Receipts will be available via the CTA high-speed line, and will be available from the national securities exchange on which they are listed. Prices related to foreign exchange-traded common stocks, preferred stocks, rights, warrants, convertible securities, and MLPs will be available from the applicable exchange or from major market data vendors. Intra-day and closing price information relating to OTC-traded common stocks, ADRs, preferred stocks, rights, warrants, convertible securities, and MLPs will be available from major market data vendors. Quotation and last-sale information for futures will be available from the exchange on which they are listed. Quotation and last-sale information for exchange-listed options cleared via the Options Clearing Corporation will be available via the Options Price Reporting Authority. Price information regarding investment company securities (other than exchange-traded investment company securities) will be available from the applicable fund. Price information regarding U.S. government securities, repurchase agreements, and reverse repurchase agreements may be obtained from brokers and dealers who make markets in such securities or through nationally recognized pricing services through subscription agreements.

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

<sup>24</sup> On a daily basis, the Adviser will disclose on the Fund's Web site the following information regarding each portfolio holding, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index, or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held; maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The Web site information will be publicly available at no charge.

necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. 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. Further, trading in the Shares will 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. In addition, trading in the Shares 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.<sup>25</sup> The Adviser, as the 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 the Fund's portfolio. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that neither the Adviser nor the Sub-Adviser is a registered broker-dealer or affiliated with a broker-dealer, and 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 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.

The Exchange represents that it 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. To support this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued

<sup>25</sup> 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.

listing criteria applicable to Managed Fund Shares.

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

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange, which 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.<sup>26</sup>

(4) The Exchange, or FINRA on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain underlying securities and financial instruments with other markets and other entities that are members of the ISG, and the Exchange, or FINRA on behalf of the Exchange, or both, may obtain trading information regarding trading in such securities and financial instruments from such markets and other entities.<sup>27</sup> In addition, the Exchange may obtain information regarding trading in such securities and financial instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(5) Not more than 10% of the net assets of the Fund in the aggregate invested in equity securities (other than non-exchange-traded investment company 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.

(6) While the Fund may invest in inverse ETFs, ETNs, and exchange-traded pooled vehicles, the Fund will not invest in leveraged or inverse leveraged ETFs, ETNs, and exchange-traded pooled vehicles.

(7) The Fund may invest in U.S. exchange-traded equity options, U.S. exchange-traded index options, and U.S. exchange-traded stock index futures contracts, all of which are traded in markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>26</sup> See Amendment No. 2, *supra* note 5, at 17. The Exchange states that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

<sup>27</sup> See *id.*

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. 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 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 assets.

(9) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.<sup>28</sup>

(10) The Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns. The Fund's investments will not be used to seek performance that is the multiple or inverse multiple of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A).

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

(12) 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. Specifically, the Information 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 and the Disclosed Portfolio 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.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules

and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor<sup>29</sup> for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m). This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act<sup>30</sup> and Section 11A(a)(1)(C)(iii) of the Exchange Act<sup>31</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>32</sup> that the proposed rule change (SR-NYSEArca-2016-46), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12782 Filed 5-31-16; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>29</sup> The Commission notes that certain other proposals for the listing and trading of managed fund shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Amendment No. 2 to SR-BATS-2016-04, available at: <http://www.sec.gov/comments/sr-bats-2016-04/bats201604-2.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>32</sup> 15 U.S.C. 78s(b)(2).

<sup>33</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 2, 2016 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Adjudicatory matters; and
- Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brent J. Fields from the Office of the Secretary at (202) 551-5400.

Dated: May 26, 2016.

**Brent J. Fields,**  
Secretary.

[FR Doc. 2016-12948 Filed 5-27-16; 11:15 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77902; File No. SR-NYSEMKT-2016-55]

### Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 930NY Regarding Definition of Floor Broker

May 25, 2016.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>28</sup> See 17 CFR 240.10A-3.