

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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549-1090, 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 offices 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 Number SR-NASDAQ-2013-038, and should be submitted on or before April 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

Kevin M. O'Neill,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69061; File No. SR-NYSEArca-2013-01]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of the Newfleet Multi-Sector Income ETF Under NYSE Arca Equities Rule 8.600

March 7, 2013.

#### I. Introduction

On January 4, 2013, 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 ("Act" or "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 Newfleet Multi-Sector Income ETF ("Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the *Federal Register* on January 23, 2013.<sup>3</sup> The Commission received no comments

on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to 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 AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The investment manager to the Fund will be AdvisorShares Investments LLC ("Adviser"). Newfleet Asset Management, LLC will serve as sub-adviser to the Fund ("Sub-Adviser"). Foreside Fund Services, LLC will serve as the distributor for the Fund. The Bank of New York Mellon will serve as the custodian and transfer agent for the Fund. The Exchange represents that the Adviser is not affiliated with a broker-dealer. The Exchange represents that the Sub-Adviser is affiliated with a broker-dealer and has implemented a fire wall with respect to 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 the portfolio.<sup>5</sup>

#### Description of the Fund

##### Principal Investments

The Fund will, under normal market conditions,<sup>6</sup> invest at least eighty

percent (80%) in investment-grade fixed income securities, which are fixed income securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization. The Fund may invest in unrated securities to a limited extent if such security is determined by the Sub-Adviser to be of comparable quality.<sup>7</sup> The average duration of the Fund's fixed income investments will range from one to three years.

The Fund's investment objective is to provide a competitive level of current income, consistent with preservation of capital, while limiting fluctuations in net asset value ("NAV") due to changes in interest rates. The Fund seeks to apply extensive credit research and a time-tested approach to capitalize on opportunities across undervalued areas of the bond markets.

The Sub-Adviser will seek to provide diversification by allocating the Fund's investments among various sectors of the fixed income markets, including investment grade debt securities issued primarily by U.S. issuers and secondarily by non-U.S. issuers, as follows:

- Securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, authorities, or instrumentalities, including collateralized mortgage obligations, real estate mortgage investment conduits, and other pass-through securities;
- Non-agency<sup>8</sup> commercial mortgage-backed securities ("CMBS"), agency and non-agency residential mortgage-backed securities ("RMBS"), and other asset backed securities;<sup>9</sup>

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>7</sup> In determining whether a security is of "comparable quality," the Sub-Adviser will consider, for example, whether the issuer of the security has issued other rated securities; whether the obligations under the security are guaranteed by another entity and the rating of such guarantor (if any); whether and (if applicable) how the security is collateralized; other forms of credit enhancement (if any); the security's maturity date; liquidity features (if any); relevant cash flow(s); valuation features; other structural analysis; macroeconomic analysis; and sector or industry analysis.

<sup>8</sup> "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, Federal Home Loan Mortgage Corporation, Federal Home Loan Banks, or the Government National Mortgage Association.

<sup>9</sup> Although the Fund has not established a fixed limit to the amount of non-agency securities in which it will invest, at least 80% of the Fund's net assets will be, under normal market conditions, invested in U.S. dollar denominated investment grade fixed income securities. The liquidity of any such security will be a factor in the selection of any such security.

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On June 25, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 ("Securities Act") and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) ("Registration Statement"). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677).

<sup>5</sup> See NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>6</sup> The term "under normal market conditions" includes, but is not limited to, the absence of 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

<sup>9</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. 68666 (Jan. 16, 2013), 78 FR 4960 ("Notice").

- U.S. and non-U.S. corporate bonds;<sup>10</sup>
- Yankee bonds;<sup>11</sup>
- Taxable municipal bonds and tax-exempt municipal bonds; and
- Debt securities issued by foreign governments and their political subdivisions.

The Fund represents that the portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities. The Fund will only purchase performing securities and not distressed debt.<sup>12</sup>

In seeking to achieve the Fund's investment objective, the Sub-Adviser will employ active sector rotation and disciplined risk management in the construction of the Fund's portfolio. The Fund's investable assets will be allocated among various sectors of the fixed income market using a "top-down"<sup>13</sup> relative value approach that looks at factors such as yield and spreads, supply and demand, investment environment, and sector fundamentals. The Sub-Adviser will select particular investments using a bottom-up, fundamental research-driven analysis that includes assessment of credit risk, company management, issuer capital structure, technical market conditions, and valuations. The Sub-Adviser will select securities it believes offer the best potential to achieve the Fund's investment objective of providing a high level of total return, including a competitive level of current income, while preserving capital.

#### Other Investments

While the Fund will invest at least eighty percent (80%) in investment-grade fixed income securities, in the absence of normal market conditions the Fund may invest 100% of its total assets, without limitation, in short-term high-quality debt securities and money

<sup>10</sup> The Adviser expects that under normal market conditions, the Fund will seek to invest at least 75% of its assets in corporate bond issuances that have at least \$100,000,000 par amount outstanding in developed countries and at least \$200,000,000 par amount outstanding in emerging market countries.

<sup>11</sup> Yankee bonds are denominated in U.S. dollars, registered in accordance with the Securities Act and publicly issued in the U.S. by foreign banks and corporations.

<sup>12</sup> Distressed debt is debt that is currently in default and is not expected to pay the current coupon.

<sup>13</sup> A "top-down" portfolio management style utilizes a tactical and globally diversified allocation strategy in an attempt to reduce risk and increase overall performance. This management style begins with a look at the overall economic picture and current market conditions and then narrows its focus down to sectors, industries, or countries and ultimately to individual companies. The final step is a fundamental analysis of each individual security and to a lesser extent technical analysis.

market instruments either directly or through exchange traded funds ("ETFs").<sup>14</sup> The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. These short-term debt instruments and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. government securities, repurchase and reverse repurchase agreements,<sup>15</sup> and bonds that are rated BBB or higher.

The Fund may invest up to 20% of its total assets in fixed-income securities that are rated below investment grade at the time of purchase. Such securities include corporate high yield debt securities, emerging market high yield debt securities, and bank loans. In addition, such securities may include non-investment grade CMBS, RMBS, or other asset-backed securities, or debt securities issued by foreign issuers. If certain of the Fund's holdings experience a decline in their credit quality and fall below investment grade, the Fund may continue to hold the securities and they will not count toward the Fund's 20% investment limit; however, the Fund will make reasonable investment decisions relating to the Fund's holdings aligned with its investment objective with respect to such securities. Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets. The Sub-Adviser will regularly review the Fund's portfolio construction, endeavoring to minimize risk exposure

<sup>14</sup> The ETFs in which the Fund may invest will be registered under the 1940 Act and include 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). Such ETFs all will be listed and traded in the U.S. on registered exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged ETFs (e.g., 2X or 3X).

<sup>15</sup> The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

by closely monitoring portfolio characteristics such as sector concentration and portfolio duration and by investing no more than 5% of the Fund's total assets in securities of any single issuer (excluding the U.S. government, its agencies, authorities, or instrumentalities).

The Fund may invest in equity securities.<sup>16</sup> The Fund will purchase such equity securities traded in the U.S. on registered exchanges. Additionally, the Fund may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging countries.<sup>17</sup> With respect to its equity securities investments, the Fund will invest only in equity securities (including Equity Financial Instruments) 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.

<sup>16</sup> Equity securities represent ownership interests in a company or partnership and consist not only of common stocks, which are one of the Fund's primary types of investments, but also preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

<sup>17</sup> The Fund may invest in issuers located outside the United States directly, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include American Depository Receipts ("ADRs"), "ordinary shares," and "New York shares" (each of which is issued and traded in the U.S.); and Global Depository Receipts ("GDRs"), European Depository Receipts ("EDRs"), and International Depository Receipts ("IDRs"), which are traded on foreign exchanges (all of the foregoing financial instruments are collectively referred to as "Equity Financial Instruments"). ADRs are U.S. dollar denominated receipts typically issued by U.S. banks and trust companies that evidence ownership of underlying securities issued by a foreign issuer. The underlying securities may not necessarily be denominated in the same currency as the securities into which they may be converted. The underlying securities are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depository bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions. Generally, ADRs in registered form are designed for use in domestic securities markets. Ordinary shares are shares of foreign issuers that are traded abroad and on a U.S. exchange. New York shares are shares that a foreign issuer has allocated for trading in the U.S. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. dollars, which protects the Fund from foreign settlement risks. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world.

The Fund may invest in exchange-traded notes (“ETNs”).<sup>18</sup>

The Fund may invest in, to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder,<sup>19</sup> other affiliated and unaffiliated funds, such as open-end or closed-end management investment companies,<sup>20</sup> including other ETFs; provided that the Fund, immediately after such purchase or acquisition, does not own in the aggregate: (i) More than 3% of the total outstanding voting stock of the acquired company; (ii) securities issued by the acquired company having an aggregate value in excess of 5% of the value of the total assets of the Fund; or (iii) securities issued by the acquired company and all other investment companies (other than Treasury stock of the Fund) having an aggregate value in excess of 10% of the value of the total assets of the Fund.

The Fund also may invest in the securities of other investment companies if the Fund is part of a “master-feeder” structure or operates as a fund of funds in compliance with Section 12(d)(1)(E), (F) and (G) of the 1940 Act and the rules thereunder.<sup>21</sup> Section 12(d)(1) prohibits another investment company from selling its shares to the Fund if, after the sale: (i) the Fund owns more than 3% of the other investment company’s voting stock or (ii) the Fund and other investment companies, and companies controlled by them, own more than 10% of the voting stock of such other investment company. The Trust has entered into agreements with several unaffiliated ETFs that permit, pursuant to a Commission order, the Fund to purchase shares of those ETFs beyond such limits set forth in Section 12(d)(1). The Fund will only make such investments in conformity with the requirements of Subchapter M of the Internal Revenue Code of 1986, as amended (“Code”). The Fund will seek to qualify for treatment as a Regulated Investment Company under the Code.

The Fund may invest in the exchange traded securities of pooled vehicles that are not investment companies and, thus, not required to comply with the provisions of the 1940 Act. Such pooled

vehicles would be required to comply with the provisions of other federal securities laws, such as the Securities Act. These 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 exchange-traded real estate investment trusts.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests (e.g., bank loans). 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 securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

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

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. 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 will not invest in options contracts, futures contracts, or swap agreements.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>22</sup> as provided

by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio<sup>23</sup> will be made available to all market participants at the same time. The Fund’s investments will be consistent with the Fund’s investment objective and will not be used to enhance leverage.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.<sup>24</sup>

### III. Discussion and Commission’s Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act<sup>25</sup> and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,<sup>27</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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

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 Act,<sup>28</sup> which sets

<sup>18</sup> ETNs, also called index-linked securities as would be listed, for example, under NYSE Arca Equities Rule 5.2(j)(6), are senior, unsecured, unsubordinated debt securities issued by an underwriting bank that are designed to provide returns that are linked to a particular benchmark less investor fees.

<sup>19</sup> 15 U.S.C. 80a-12(d)(1).

<sup>20</sup> Investment companies may include index-based investments, such as ETFs that hold substantially all of their assets in securities representing a specific index.

<sup>21</sup> 15 U.S.C. 80a-12(d)(1)(E),(F) and (G).

<sup>22</sup> 17 CFR 240.10A-3.

<sup>23</sup> The term “Disclosed Portfolio” is defined in NYSE Arca Equities Rule 8.600(c)(2).

<sup>24</sup> See Notice and Registration Statement, *supra* notes 3 and 4, respectively.

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

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. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session (9:30 a.m. Eastern time to 4:00 p.m. Eastern time).<sup>29</sup> On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on the Trust's Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>30</sup> The NAV of the Fund will be calculated once each business day as of the regularly scheduled close of trading (normally, 4:00 p.m. Eastern time) on the New York Stock Exchange, LLC. 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. In addition, price information for the debt and other securities and investments held by the Fund will be available through major market data vendors or on the exchanges on which they are traded. The Trust's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

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>29</sup> According to the Exchange, several major market data vendors display and/or make widely available Portfolio Indicative Values taken from the CTA or other data feeds.

<sup>30</sup> On a daily basis, the Fund will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the 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 Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.<sup>31</sup> In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments constituting the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>32</sup> Further, the Commission notes that 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 portfolio.<sup>33</sup> The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that, while the Adviser is not affiliated with a broker-dealer, the Sub-Adviser is affiliated with a broker-dealer, and the Sub-Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the portfolio.<sup>34</sup> The Exchange

<sup>31</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>32</sup> See NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

<sup>33</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

<sup>34</sup> See *supra* note 5 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the

will communicate as needed regarding trading in the Shares with other markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange represents that the Fund will invest only in equity securities and Equity Financial Instruments that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

The Exchange further represents that the Shares are deemed 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 has made representations, including:

(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's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(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

fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment 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.

Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value 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, the Fund will be in compliance with Rule 10A-3 under the Exchange Act,<sup>35</sup> as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will, under normal market conditions, invest at least eighty percent (80%) in investment-grade securities, which are fixed income securities with credit ratings within the four highest rating categories of a nationally recognized statistical rating organization, or, if unrated, those securities that the Sub-Adviser determines to be of comparable quality.

(7) The Fund's portfolio will include a minimum of 13 non-affiliated issuers of fixed income securities.

(8) The Fund will only purchase performing securities and not distressed debt.

(9) Generally, the Fund will limit its investments in corporate high yield debt securities to 10% of its assets and will limit its investments in non-U.S. issuers to 30% of its assets.

(10) Under normal market conditions, the Fund will seek to invest at least 75% of its assets in corporate bond issuances that have at least \$100,000,000 par amount outstanding in developed countries and at least \$200,000,000 par amount outstanding in emerging market countries.

(11) The Fund will invest only in equity securities (including Equity Financial Instruments) that trade in markets that are members of the ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange.

(12) The Fund will not invest in options contracts, futures contracts, or swap agreements.

(13) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities, including Rule 144A securities and loan participation interests, and 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 securities.

(14) The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. The Fund will not invest in leveraged or inverse leveraged ETFs.

(15) A minimum of 100,000 Shares of the Fund 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 description of the Fund.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act<sup>36</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 Act,<sup>37</sup> that the proposed rule change (SR-NYSEArca-2013-01) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>38</sup>

**Kevin M. O'Neill,**  
*Deputy Secretary.*

[FR Doc. 2013-05717 Filed 3-12-13; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-69063; File No. SR-FINRA-2013-002]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Amend FINRA Rule 2267 (Investor Education and Protection)

March 7, 2013.

On January 7, 2013, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend FINRA Rule 2267 (Investor Education and Protection) to require

that members include a prominent description of and link to FINRA BrokerCheck, as prescribed by FINRA, on their Web sites, social media pages, and any comparable Internet presence, and on Web sites, social media pages, and any comparable Internet presence relating to a member's investment banking or securities business maintained by or on behalf of any person associated with a member. The proposed rule change was published for comment in the **Federal Register** on January 25, 2013.<sup>3</sup> The Commission received 24 comment letters on the proposal.<sup>4</sup>

Section 19(b)(2) of the Act<sup>5</sup> provides that, within 45 days of the publication of notice of the filing of a proposed rule

<sup>3</sup> See Securities Exchange Act Release No. 68700 (Jan. 18, 2013), 78 FR 5542.

<sup>4</sup> See Letter from Charles Barker, dated January 29, 2013; Letter from David M. Sobel, Esq., Abel/Noser Corp., dated January 30, 2013; Letter from Pamela Albanese, Legal Intern, and Christine Lazaro, Esq., Acting Director, St. John's University School of Law, Securities Arbitration Clinic, dated February 4, 2013; Letter from Peter J. Chepucavage, General Counsel, Plexus Consulting Group, LLC, dated February 6, 2013; Letter from Jonathan W. Evans and Michael S. Edmiston, Jonathan W. Evans Associates, dated February 10, 2013; Letter from Scott R. Shewan, Pape Shewan, LLP, dated February 11, 2013; Letter from David Neuman, Stoltmann Law Offices, dated February 12, 2013; Letter from Barry D. Estell, dated February 12, 2013; Letter from Scott C. Ilgenfritz, President, Public Investors Arbitration Bar Association, dated February 13, 2013; Letter from Bert Savage, dated February 13, 2013; Letter from William A. Jacobson, Esq., Associate Clinical Professor, Cornell Law School, Director, Securities Law Clinic, and Alexander Wingate, Cornell Law School, dated February 14, 2013; Letter from A. Heath Abshire, President, North American Securities Administrators Association, Inc., dated February 15, 2013; Letter from Robert J. McCarthy, Director of Regulatory Policy, Wells Fargo Advisors, LLC, dated February 15, 2013; Letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute, dated February 15, 2013; Letter from David T. Bellaire, Esq., Executive Vice President & General Counsel, Financial Services Institute, dated February 15, 2013; Letter from Scott A. Eichhorn, Supervising Attorney, and Julianne S. Bisceglia, Legal Intern, University of Miami School of Law, Investor Rights Clinic, dated February 15, 2013; Letter from Melissa MacGregor, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated February 15, 2013; Letter from Brendan Daly, Legal and Compliance Counsel, Commonwealth Financial Network, dated February 15, 2013; Letter from James Cooper, Chief Operating Officer, Zions Direct, dated February 15, 2013; Letter from Melissa Callison, Vice President, Compliance, Charles Schwab & Co., Inc., dated February 15, 2013; Letter from James Smith, Chief Compliance Officer, BlackRock Investments, LLC, Ned Montencourt, Chief Compliance Officer, BlackRock Capital Markets, LLC, BlackRock Execution Services, and Joanne Medero, Managing Director, BlackRock, Inc., dated February 15, 2013; Letter from Clifford E. Kirsch and Eric A. Arnold, Sutherland Asbill & Brennan LLP, for the Committee of Annuity Insurers, dated February 15, 2013; Letter from Steven B. Caruso, Maddox Hargett Caruso, P.C., dated February 16, 2013; and Letter from Lisa Catalano, Esq., dated February 18, 2013.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> 15 U.S.C. 78s(b)(2).

<sup>38</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>35</sup> 17 CFR 240.10A-3.