

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-FICC-2020-010 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FICC-2020-010. 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 FICC and on DTCC's website (<http://dtcc.com/legal/sec-rule-filings.aspx>). 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-FICC-2020-010 and should be submitted on or before September 15, 2020.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89615; File No. SR-NYSE-2020-67]

#### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Article IV, Section 4.05 of the Thirteenth Amended and Restated Operating Agreement of the Exchange**

August 19, 2020.

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> notice is hereby given that on August 7, 2020, New York Stock Exchange LLC ("NYSE" or the "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 self-regulatory organization. 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 Article IV, Section 4.05 of the Thirteenth Amended and Restated Operating Agreement of the Exchange ("Operating Agreement"), to allow the use of regulatory fines for charitable donations, and to make additional conforming and non-substantive edits. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Article IV, Section 4.05 (Limitation on Distributions) of the Exchange's Operating Agreement to allow the use of regulatory fines for charitable donations, and to make additional conforming and non-substantive edits.

Currently, regulatory fines and other regulatory income may only be used to fund the Exchange's legal, regulatory and surveillance operations, and may not be distributed.<sup>3</sup> However, the size of a regulatory fine is not related to the regulatory or legal budget of the Exchange. Rather, it is tailored to address the misconduct at issue in the matter for which it is levied. As a result, there may be times when the amount of the regulatory fines collected by the Exchange regulatory staff, when combined with regulatory fees and other regulatory income, is greater than the amount needed to fund the legal, regulatory and surveillance operations. The Exchange proposes that on such occasions it be able to distribute money obtained from regulatory fines to charity.

The Exchange proposes that any such charitable donations be subject to approval by the Regulatory Oversight Committee ("ROC"). All ROC members are members of the Board of Directors that meet the requirements of the independence policy of the Exchange, and the ROC is charged with reviewing the regulatory budget of the Exchange and inquiring into the adequacy of resources available in the budget for regulatory activities.<sup>4</sup>

<sup>3</sup> See Thirteenth Amended and Restated Operating Agreement of New York Stock Exchange LLC, Art. IV, Sec. 4.05; see also Securities Exchange Act Release No. 79115 (October 18, 2016), 81 FR 73187 (October 24, 2016) (SR-NYSE-2016-66) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Article IV, Section 4.05 of the Tenth Amended and Restated Operating Agreement of the Exchange).

<sup>4</sup> See Operating Agreement, Article II, Section 2.03(h)(ii) and Securities Exchange Act Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR-NYSE-2015-27) (Notice of Filing of Proposed Rule Change Amending the Eighth Amended and Restated Operating Agreement of the Exchange To Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange and Make Certain Conforming Amendments to Exchange Rules). The independence policy is subject to Commission

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

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

<sup>38</sup> 17 CFR 200.30-3(a)(12).

Accordingly, the Exchange proposes to amend Section 4.05 as follows (proposed additions italicized):

Any regulatory assets or any regulatory fees, fines or penalties collected by the Company's regulatory staff will be applied to fund the legal, regulatory and surveillance operations of the Company, and the Company shall not distribute such assets, fees, fines or penalties to the Member or any other entity, *with the exception that regulatory fines may be used to make charitable donations, subject to approval by the ROC.*

The Exchange believes that the proposed change would be consistent with previous rules of the Exchange regarding fine income. Specifically, between 2007 and 2016 the Exchange was subject to certain internal procedures regarding the use of fine income (the "Fine Income Procedures").<sup>5</sup> The Fine Income Procedures provided that the NYSE Regulation, Inc. Board of Directors could determine to use unused fine income that had accumulated beyond a level reasonably necessary for future contingencies for a charitable purpose.<sup>6</sup> The ROC assumed that responsibility from the Board of Directors of NYSE Regulation, Inc.<sup>7</sup>

The Exchange proposes to make technical and conforming changes to the recitals and signature page of the Operating Agreement.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act<sup>8</sup> in general, and Section 6(b)(1)<sup>9</sup> in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Exchange Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder,

review. See Securities Exchange Act Release No. 85913 (May 22, 2019), 84 FR 24853 (May 29, 2019) (SR-NYSE-2019-27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Independence Policy of the Board of Directors of the Exchange).

<sup>5</sup> See Securities Exchange Act Release No. 78326 (July 14, 2016), 81 FR 47184 (July 20, 2016) (SR-NYSE-2016-37) (Order Approving Proposed Rule Change Removing From Its Rules Certain Internal Procedures Regarding the Use of Fine Income).

<sup>6</sup> See Securities Exchange Act Release No. 77899 (May 24, 2016), 81 FR 34393 (May 31, 2016) (SR-NYSE-2016-37) (Notice of Filing of Proposed Rule Change Removing From Its Rules Certain Internal Procedures Regarding the Use of Fine Income).

<sup>7</sup> See 80 FR 37316, *supra* note 4, at note 25.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(1).

and the rules of the Exchange. The Exchange believes that the proposed rule change also is consistent with Section 6(b)(4),<sup>10</sup> which requires that the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among the exchange's members and issuers and other persons using its facilities, and Section 6(b)(5),<sup>11</sup> which requires that the rules of the exchange 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 regulating, clearing, settling, processing information with respect to, and 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 Exchange believes that the proposed change would allow the Exchange to be so organized as to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Exchange Act, the rules and regulations thereunder, and the rules of the Exchange, because the proposed change would recognize that the size of a regulatory fine is not related to the regulatory or legal budget of the Exchange, and as a result there may be times when the amount of the regulatory fines collected by the Exchange regulatory staff, when combined with regulatory fees and other regulatory income, is greater than the amount needed to fund the legal, regulatory and surveillance operations. In such a case, the proposed change would give the Exchange the option to make charitable donations using regulatory fines.

The Exchange believes that it would be appropriate to permit charitable donations because such donations would not be commercial in nature. Indeed, by keeping them unavailable for commercial distributions or other commercial purposes, the proposed amended Section 4.05 would continue to "guard against the possibility that fines may be assessed to respond to budgetary needs rather than to serve a disciplinary purpose."<sup>12</sup> It would "continue to help ensure that the Exchange does not inappropriately use its regulatory assets, fees, fines or

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 81 FR 34393, *supra* note 6, at 34395, citing Securities Exchange Act Release No. 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007) (NYSE-2006-109), at 5780.

penalties for commercial purposes or to distribute such assets, fees, fines or penalties to its direct parent, NYSE Group, Inc., or to any other entity."<sup>13</sup>

For the same reasons, the Exchange believes that the proposed change would provide for the equitable allocation of reasonable dues, fees, and other charges among the Exchange's members.

The Exchange believes that the proposed change would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because requiring ROC approval would facilitate an independent assessment of proposed charitable donations using regulatory fines. The Exchange believes that it is appropriate to have the ROC evaluate proposed charitable donations not only because its members are independent, but also because the ROC is responsible for overseeing the Exchange's regulatory and self-regulatory organization responsibilities and assessing its regulatory performance, including reviewing the regulatory budget of the Exchange and inquiring into the adequacy of resources available in the budget for regulatory activities.<sup>14</sup> As a result, the ROC would be able to evaluate a proposed charitable donation within the context of the Exchange's regulatory responsibilities and resources. Indeed, as it has previously noted, the Exchange "believes that the responsibility to assure the proper exercise by Exchange regulatory staff of the Exchange's power to fine member organizations . . . properly lies with the ROC . . . ." <sup>15</sup> That responsibility extends to the proposed use of regulatory fines.

## 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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with the administration and functioning of the Exchange.

<sup>13</sup> 81 FR 47184, *supra* note 5, at 47187.

<sup>14</sup> See Operating Agreement, Article II, Section 2.03(h)(ii).

<sup>15</sup> 81 FR 34393, *supra* note 6, at 34397.

*C. 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**

Within 45 days of the date of publication of this notice in the **Federal Register**, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-67 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-NYSE-2020-67. 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-NYSE-2020-67, and should be submitted on or before September 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-89608; File No. SR-NYSEArca-2019-77]**

**Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the AdvisorShares Pure US Cannabis ETF Under NYSE Arca Rule 8.600-E**

August 19, 2020.

**I. Introduction**

On December 13, 2019, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("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 list and trade shares ("Shares") of the AdvisorShares Pure US Cannabis ETF ("Fund") under NYSE Arca Rule 8.600-E ("Managed Fund Shares"). The proposed rule change was published for comment in the **Federal Register** on December 26, 2019.<sup>3</sup> On January 28, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission

designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On March 13, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On June 12, 2020, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.<sup>9</sup> On July 7, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>10</sup> The Commission has received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

**II. Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>11</sup>**

The Exchange proposes to list and trade Shares of the Fund under Commentary .01 to NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares on the Exchange. AdvisorShares Investments, LLC ("Adviser") is the investment

<sup>5</sup> See Securities Exchange Act Release No. 88066, 85 FR 6009 (February 3, 2020). The Commission designated March 25, 2020, as the date by which it should approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 88378, 85 FR 15834 (March 19, 2020).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> See Securities Exchange Act Release No. 89057, 85 FR 36910 (June 18, 2020). The Commission designated August 22, 2020, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>10</sup> In Amendment No. 1, the Exchange (i) represented that the Fund has obtained an opinion of counsel that provides that (a) the Fund and its shareholders will not violate the Controlled Substances Act, 21 U.S.C. 801, *et seq.*, ("Controlled Substances Act") or the Money Laundering Control Act, 18 U.S.C. 1956, *et seq.*, for the Fund's purchase of securities issued by Cannabis Companies (as defined herein) which participate in the cannabis industry in full compliance with state law and (b) the Fund's execution of a cash-settled total return swap, under certain circumstances, would not subject the Fund and its shareholders to regulatory liability should a court hold that the total return swap violates the Act or the Controlled Substances Act; and (ii) made other conforming technical changes. Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change and makes conforming and technical changes, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2019-77/srnysearca201977-7394645-218996.pdf>.

<sup>11</sup> Additional information regarding the Shares and the Fund can be found in Amendment No. 1, *supra* note 10, and the Registration Statement, *infra* note 13.

<sup>16</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. 87791 (December 18, 2019), 84 FR 71057.

<sup>4</sup> 15 U.S.C. 78s(b)(2).