

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 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. 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-NYSEArca-2010-117 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-32513 Filed 12-27-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63587; File No. SR-NYSEArca-2010-118]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF

December 21, 2010.

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> notice is hereby given that, on December 15, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade the following Managed Fund Shares under NYSE Arca Equities Rule

8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

#### 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares<sup>3</sup> ("Shares") under NYSE Arca Equities Rule 8.600: SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF (each a "Fund" and, collectively, the "Funds").<sup>4</sup> The Shares will be offered by AdvisorShares Trust (the "Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment

<sup>3</sup> A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment advisor consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

<sup>4</sup> The Commission previously approved listing and trading on the Exchange of actively-managed funds under Rule 8.600. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 59826 (April 28, 2009), 74 FR 20512 (May 4, 2009) (SR-NYSEArca-2009-22) (order approving Exchange listing and trading of Grail American Beacon Large Cap Value ETF); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR-NYSEArca-2009-55) (order approving Exchange listing and trading of Dent Tactical ETF).

company.<sup>5</sup> The investment advisor to the Funds is AdvisorShares Investments, LLC (the "Advisor"). Strategic Income Management, LLC ("Sub-Advisor" or "SiM") serves as investment sub-advisor to the Funds. The Sub-Advisor is responsible for selecting the Funds' investments according to the Funds' investment objectives, policies and restrictions. Each of the Funds will periodically change the composition of its portfolio to best meet its investment objective. Foreside Fund Services, LLC (the "Distributor") is the principal underwriter and distributor of the Funds' shares. The Bank of New York Mellon Corporation serves as the administrator ("Administrator"), custodian, transfer agent and fund accounting agent for the Funds.

Each Fund is an actively-managed exchange-traded fund and thus does not seek to replicate the performance of a specified index, but uses an active investment strategy to meet its investment objective. Accordingly, the Sub-Advisor manages each Fund's portfolio in accordance with each Fund's investment objective.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.<sup>6</sup> In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar

<sup>5</sup> The Trust is registered under the 1940 Act. On October 14, 2010, the Trust filed with the Commission Post-Effective Amendment No. 13 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-157876 and 811-22110) ("Registration Statement"). The description of the operation of the Trust and the Funds herein is based on the Registration Statement.

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Advisor and Sub-Advisor are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer.<sup>7</sup> In the event (a) the Advisor or the Sub-Advisor becomes newly affiliated with a broker-dealer, or (b) any new advisor or sub-advisor becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

#### SiM Dynamic Allocation Diversified Income ETF

According to the Registration Statement, the Fund will seek to provide total return, consisting primarily of reinvestment and growth of income with some long-term capital appreciation. The Fund is considered a “fund-of-funds” that will seek to achieve its investment objective by primarily investing in other exchange-traded

<sup>7</sup> With respect to the Funds, the Exchange represents that the Advisor, as the investment advisor of the Funds, and SiM as the Sub-Advisor, and their related personnel, are subject to Investment Advisers Act Rule 204A-1. This Rule specifically requires the adoption of a code of ethics by an investment advisor to include, at a minimum: (i) Standards of business conduct that reflect the firm’s/personnel fiduciary obligations; (ii) provisions requiring supervised persons to comply with applicable federal securities laws; (iii) provisions that require all access persons to report, and the firm to review, their personal securities transactions and holdings periodically as specifically set forth in Rule 204A-1; (iv) provisions requiring supervised persons to report any violations of the code of ethics promptly to the chief compliance officer (“CCO”) or, provided the CCO also receives reports of all violations, to other persons designated in the code of ethics; and (v) provisions requiring the investment advisor to provide each of the supervised persons with a copy of the code of ethics with an acknowledgement by said supervised persons. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment advisor to provide investment advice to clients unless such investment advisor has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment advisor 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.

funds (“ETFs”) that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and exchange-traded products (“ETPs,” and, together with ETFs, the “Underlying ETPs”) including, but not limited to, exchange-traded notes (“ETNs”), exchange-traded currency trusts and closed-end funds.<sup>8</sup>

The Fund will seek to offer the potential for total return from a high level of income and a low level of capital growth, with exposure to a low level of principal risk. The Fund through its investments in the Underlying ETPs generally will invest at least 60% of its net assets in domestic and international fixed income funds.

The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor’s outlook for the economy, the financial markets and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs, if appropriate, when the Sub-Advisor’s fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

According to the Registration Statement, under normal market conditions, the Fund’s portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold fixed-income securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold equity securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund’s portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

<sup>8</sup> Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); 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); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds.

#### SiM Dynamic Allocation Growth Income ETF

According to the Registration Statement, the Fund will seek to provide total return, consisting primarily of long term capital appreciation with some reinvestment and growth of income. The Fund is considered a “fund-of-funds” that will seek to achieve its investment objective by primarily investing in Underlying ETPs that offer diversified exposure to various investment types (equities, bonds, etc.), global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and ETPs including, but not limited to, ETNs, exchange-traded currency trusts and closed-end funds.<sup>9</sup>

In general, the Fund will seek to offer investors the potential for total return from a low to medium level of income and a medium to high level of capital growth, while exposing them to a medium to high level of principal risk. The Fund, through its investments in the Underlying ETPs, generally will invest at least 60% of its net assets in domestic and international equity funds.

The Fund will allocate its assets among Underlying ETPs in accordance with the Sub-Advisor’s outlook for the economy, the financial markets and the relative market valuations of the Underlying ETPs. The Fund will sell interests or reduce investment exposure among market segments or Underlying ETPs when the Sub-Advisor’s fundamental and quantitative factors indicate a low relative strength of such market segments and that such market segments are likely to underperform the market as a whole.

Under normal market conditions, the Fund’s portfolio will generally:

- Invest up to 85% of its assets in Underlying ETPs that hold equity securities as well as cash equivalents;
- Not invest more than 40% of its net assets in Underlying ETPs that primarily hold fixed income securities; and
- Invest up to 20% of its assets in any single Underlying ETP.

The Fund’s portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Advisor, due to certain market conditions, may alter the percentage ranges when it deems appropriate.

#### Other Investments

The Funds and the Underlying ETPs may invest in equity securities representing ownership interests in a company or partnership and that consist

<sup>9</sup> See note 7 *supra* [sic].

of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.<sup>10</sup> The Funds may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Funds may enter into reverse repurchase agreements as part of the Funds' investment strategy.

The Funds may invest in U.S. government securities and in U.S. Treasury zero-coupon bonds. The Funds may invest in shares of real estate investment trusts ("REITs"), which are pooled investment vehicles which invest primarily in real estate or real estate related loans. To respond to adverse market, economic, political or other conditions, the Funds may invest 100% of their total assets, without limitation, in high-quality short-term debt securities and money market instruments.

The Funds 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 Funds may not invest 25% or more of total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Funds will not invest 25% or more of total assets in any investment company that so concentrates.

Underlying ETPs will be listed on a national securities exchange. Except for Underlying ETPs that may hold non-U.S. issues, the Funds will not otherwise invest in non-U.S. issues.

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 Funds will be in compliance with Rule 10A-3<sup>11</sup> under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund 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 net asset value ("NAV") and the Disclosed Portfolio will be made

available to all market participants at the same time.

#### Creation and Redemption of Shares

The Funds will offer and issue shares at NAV only in aggregated lots of 50,000 or more shares (each a "Creation Unit" or a "Creation Unit Aggregation"), generally in exchange for: (i) A basket of portfolio securities (the "Deposit Securities"); and (ii) an amount of cash (the "Cash Component"). Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit." Shares are redeemable only in Creation Unit Aggregations, and, generally, in exchange for portfolio securities and a specified cash payment. Creations or redemptions of Shares will be effected by or through an Authorized Participant, as described in the Registration Statement, or a Depository Trust Company participant.

The Administrator, through the National Securities Clearing Corporation ("NSCC"), will make available on each Business Day,<sup>12</sup> immediately prior to the opening of business on the NYSE, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous Business Day) for a Fund. The identity and number of shares of the Deposit Securities required for a Fund Deposit for a Fund will change as rebalancing adjustments and corporate action events are reflected from time to time by the Sub-Advisor with a view to the investment objective of a Fund.<sup>13</sup>

In addition to the list of names and numbers of securities constituting the current Deposit Securities of a Fund Deposit, the Administrator, through the NSCC, also will make available on each Business Day, the estimated Cash Component, effective through and including the previous Business Day, per outstanding Creation Unit of a Fund.

#### Net Asset Value

According to the Registration Statement, the NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration and distribution fees, will be accrued daily

and taken into account for purposes of determining NAV. The NAV per Share for the Funds will be calculated by the Administrator and determined as of the close of the regular trading session on the NYSE Arca (ordinarily 4 p.m., Eastern Time) on each day that the Exchange is open.

In computing each Fund's NAV, each Fund's securities holdings will be valued based on their last readily available market price. Price information on listed securities is taken from the exchange where the security is primarily traded. Securities regularly traded in an over-the-counter market are valued at the latest quoted sales price on the primary exchange or national securities market on which such securities are traded. Securities not listed on an exchange or national securities market, or securities in which there was no last reported sales price, are valued at the most recent bid price. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith by the Sub-Advisor in accordance with procedures adopted by the Funds' Board of Trustees.

#### Availability of Information

The Funds' Web site (<http://www.advisorshares.com>), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>14</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for

<sup>10</sup> The Funds will hold only equity securities traded in the U.S. on registered exchanges.

<sup>11</sup> 17 CFR 240.10A-3.

<sup>12</sup> A "Business Day" with respect to the Funds is any day on which the New York Stock Exchange ("NYSE") is open for business.

<sup>13</sup> Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

<sup>14</sup> The Bid/Ask Price of the Funds will be determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

the Funds' calculation of NAV at the end of the business day.<sup>15</sup>

On a daily basis, the Advisor will disclose for each portfolio security or other financial instrument of the Funds the following information: Ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the NSCC. The basket represents one Creation Unit of the Funds. The Web site information will be publicly available at no charge.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Funds' Shareholder Reports, and its Form N-CSR and Form N-SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N-CSR and Form N-SAR may be viewed on-screen or downloaded from the Commission's Web site at <http://www.sec.gov>. 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 will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. Information regarding market price and trading volume of the Underlying ETPs will be continually available on a real-time basis throughout the day from major market data vendors. Last sale and closing price information for Underlying ETPs will be available on the Web site of the national securities exchange on which such securities are listed or through major market data vendors. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by one or more major market data vendors at least every 15

<sup>15</sup> Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

seconds during the Core Trading Session. The dissemination of the Portfolio Indicative Value, together with the securities and/or financial instruments comprising the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each of the Funds on a daily basis and to provide a close estimate of that value throughout the Core Trading Session.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

#### Trading Halts

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 Funds.<sup>16</sup> Trading in Shares of the Funds 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. 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 Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. 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 Funds may be halted.

#### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than

<sup>16</sup> See NYSE Arca Equities Rule 7.12, Commentary .04.

\$1.00 for which the MPV for order entry is \$0.0001.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these 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.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG, including those exchanges trading the Underlying ETPs and other securities held by the Funds, described above under "Other Investments".<sup>17</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued

<sup>17</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m. Eastern Time each trading day.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>18</sup> that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of actively managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### 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 within 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 e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2010-118 on the subject line.

### Paper Comments

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

All submissions should refer to File Number SR-NYSEArca-2010-118. This file number should be included on the subject line if e-mail 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 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 a.m. and 3 p.m. Copies of such 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 publicly available. All submissions should refer to File Number SR-NYSEArca-2010-118 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-32608 Filed 12-27-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63593; File No. SR-NYSE-2010-83]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Making Permanent the Pilot Program That Offers Liquidity Takers a Reduced Transaction Fee Structure for Certain Bond Trades Executed on the NYSE Bonds System

December 21, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on December 16, 2010, the New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to make permanent the pilot program that offers liquidity takers a reduced transaction fee structure for certain bond trades executed on the NYSE Bonds<sup>SM</sup> system ("NYSE Bonds"). The text of the proposed rule change is available at the Exchange's principal office, <http://www.nyse.com>, the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### 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

<sup>19</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>18</sup> 15 U.S.C. 78f(b)(5).