

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-70807; File No. SR-NYSEArca-2013-117]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing to Amend the Rule Governing the Listing and Trading of Shares of the WisdomTree Global Real Return Fund

November 5, 2013.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 29, 2013, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) 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 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 (“Managed Fund Shares”). [sic] proposes to [sic] reflect a change to the means of achieving the investment objective applicable to the WisdomTree Global Real Return Fund (the “Fund”). The Fund is currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.600 (“Managed Fund Shares”).

The text of the proposed rule change is available on the Exchange's Web site 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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the Fund under NYSE Arca Equities Rule 8.600<sup>4</sup> (“Managed Fund Shares”).<sup>5</sup> The Shares are offered by the WisdomTree Trust (“Trust”), which was established as a Delaware statutory trust on December 15, 2005 and registered with the Commission as an open-end investment company.<sup>6</sup> The Fund is currently listed and traded on the Exchange.

<sup>4</sup> The Commission originally approved the listing and trading of the Shares on the Exchange on March 12, 2010 as Shares of the WisdomTree Real Return Fund. See Securities Exchange Act Release No. 61697 (March 12, 2010), 75 FR 13616 (March 22, 2010) (SR-NYSEArca-2010-04) (order approving listing and trading of WisdomTree Real Return Fund) (“March 2010 Order”); see also Securities Exchange Act Release No. 61519 (February 16, 2010), 75 FR 8164 (February 23, 2010) (SR-NYSEArca-2010-04) (notice of proposal relating to WisdomTree Real Return Fund). Before the Shares were listed, the Commission approved a proposed rule change filed by the Exchange to seek certain changes to the Fund's investment strategy that were not reflected in the March 2010 Order. See Securities Exchange Act Release Nos. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR-NYSEArca-2011-21) (order approving proposed rule change to list and trade the WisdomTree Global Real Return Fund) (“Prior Order”); and 64411 (May 5, 2011), 76 FR 27127 (May 10, 2011) (SR-NYSEArca-2011-21) (notice of filing of proposed rule change to list and trade WisdomTree Global Real Return Fund) (“Prior Notice” and, together with the Prior Order, the “Prior Release”).

<sup>5</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-1) (“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>6</sup> The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A (File Nos. 333-132380 and 811-21864) (“Registration Statement”) under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”). On September 26, 2013, the Trust filed with the Commission a supplement to the Registration Statement. See Form 497, Supplement to Registration Statement on Form N-1A for the Trust. The descriptions of the Fund and the Shares contained herein are based, in part, on the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28471 (October 27, 2008) (File No. 812-13458) (“Exemptive Order”). In compliance with Commentary .04 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares

#### Description of the Shares and the Fund

WisdomTree Asset Management, Inc. is the investment adviser (“Adviser”) to the Fund. Western Asset Management Company serves as sub-adviser for the Fund (“Sub-Adviser”).<sup>7</sup>

In this proposed rule change, the Exchange proposes to make the following changes, described below, to the investment strategy the Sub-Adviser will use to obtain the Fund's investment objectives (the “Proposed Amendments”).<sup>8</sup> Under the Proposed Amendments, the Fund proposes to:

(1) Reduce the Fund's minimum investment in investment grade<sup>9</sup> securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets);<sup>10</sup>

(2) Increase the permitted percentage of the Fund's assets invested in more

based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act.

<sup>7</sup> Mellon Capital Management Corporation was cited as the Sub-Adviser in the Prior Release.

<sup>8</sup> The Proposed Amendments described herein will be effective upon filing with the Commission of another amendment to the Trust's Registration Statement or supplement thereto. See note 5 [sic], *supra*. The Prior Notice stated that the Fund intends to invest at least 70% of its net assets in “Fixed Income Securities” as defined therein. The Adviser represents that the Adviser and the Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Notice, and the Fund will not implement the Proposed Amendments described herein until the instant proposed rule change is operative.

<sup>9</sup> The Adviser represents that the term “investment grade” for purposes of this proposed rule change mean securities rated in the Baa/BBB categories or above by one or more nationally recognized statistical rating organizations (“NRSROs”). If a security is rated by multiple NRSROs, the Fund will treat the security as being in the highest rating category received from an NRSRO.

<sup>10</sup> The determination by the Adviser or Sub-Adviser that an unrated security is of comparable quality to another security rated below investment grade will be based on, among other factors, a comparison between the unrated security and securities issued by similarly situated companies to determine where in the spectrum of credit quality the unrated security would fall. The Adviser or Sub-Adviser would also perform an analysis of the unrated security and its issuer similar, to the extent possible, to that performed by a NRSRO in rating similar securities and issuers. See *Credit Analysis of Portfolio Securities*, Commission No-Action Letter (May 8, 1990).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

speculative debt securities ("Speculative Debt") from not more than 10% of Fund assets invested in securities rated BB or below by Standard & Poor's Corporation ("S&P") or equivalently rated by Moody's Investors Service ("Moody's") or Fitch Ratings ("Fitch") to not more than 15% of Fund assets invested in securities rated B or below by S&P or equivalently rated by Moody's or Fitch;<sup>11</sup> and

(3) Eliminate the current 20% limitation on investments in corporate bonds and include corporate bonds<sup>12</sup> within the 70% minimum intended investment in Fixed Income Securities.

The Adviser represents that the Fund's investments in non-investment grade debt securities and corporate bonds, will in each case be limited to securities that are liquid with readily available quotations.<sup>13</sup> The Adviser

<sup>11</sup> Debt securities rated B or below represent over 44% of the \$1.2 trillion high yield bond market. Source: Merrill Lynch High Yield Master II Index. The Average Daily Trading Volume ("ADTV") of U.S. corporate bonds rated B has typically been comparable to, and often higher, than the ADTV of U.S. corporate bonds rated BB between January 2005 and June 2013. Source: <http://www.sifma.org/research/statistics.aspx>.

<sup>12</sup> The Exchange notes that the Prior Release did not specify a limit to the Fund's investments in Rule 144A securities not deemed illiquid by the Adviser or Sub-Adviser. Under this proposed rule change, the Fund may therefore invest without limit in corporate bonds that are Rule 144A securities and are deemed liquid by the Adviser or Sub-Adviser. The Fund may also invest up to 15% of the Fund's net assets (calculated at the time of investment) in illiquid assets, including Rule 144A securities that are deemed illiquid by the Adviser or Sub-Adviser, consistent with Commission guidance. The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act).

In reaching liquidity decisions, the Adviser or Sub-Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the securities and the nature of the marketplace trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>13</sup> The average daily trading volume ("ADTV") in non-investment grade U.S. corporate debt (including both publicly traded and Rule 144A

represents that there is no change to the Fund's investment objective.<sup>14</sup> The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

Except for the Proposed Amendments noted above, all other facts presented and representations made in the Rule 19b-4 filing underlying the Prior Release remain unchanged. The Adviser represents that the Proposed Amendments would be consistent with the Exemptive Order under the 1940 Act and the rules thereunder.

Terms used herein but not otherwise defined shall have the meanings ascribed to them in the Rule 19b-4 filing underlying the Prior Release.<sup>15</sup>

The Exchange notes that the Commission has previously approved for listing other actively-managed exchange-traded funds that collectively include each of the conditions contained in the Proposed Amendments.<sup>16</sup>

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>17</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 is designed to

securities) during each of the first two calendar quarters of 2013 exceeded \$10 billion, as compared with an ADTV for investment grade U.S. corporate debt exceeding \$16 billion. Source: <http://www.sifma.org/research/statistics.aspx>. Intra-day prices on non-investment grade debt securities are available through TradeWeb and Market Axess.

<sup>14</sup> The Proposed Amendments will be effective upon filing with the Commission of an amendment to the Trust's Registration Statement and upon effectiveness and operativeness of this proposal.

<sup>15</sup> See note 4, *supra*.

<sup>16</sup> See Securities Exchange Act Release No. 68863 (February 7, 2013), 78 FR 10222 (February 13, 2013) (order approving listing and trading of Guggenheim Enhanced Total Return ETF)(SR-NYSEArca-2012-142) ("Guggenheim ETF Order"). The Guggenheim ETF Order permitted the Guggenheim Enhanced Total Return ETF to invest in a manner consistent with the Proposed Amendments. See, also, Securities Exchange Act Release No. 68073 (October 19, 2012), 77 FR 65237 (October 25, 2012) (SR-NASDAQ-2012-98) (order approving listing and trading of WisdomTree Global Corporate Bond Fund, explicitly permitting that fund to invest up to 45% of its assets in non-investment grade securities and up to 15% of its assets in securities rated B or below by S&P or equivalently rated by Moody's or Fitch). The WisdomTree Global Corporate Bond Fund, therefore, is permitted to invest a higher percentage of that fund's assets in non-investment grade securities (45%) than is proposed under this proposed rule change (40%).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. As discussed below, the Exchange believes that the Proposed Amendments will not either individually, nor taken collectively, make the Shares more difficult to value or make them susceptible to manipulation, but rather the Proposed Amendments will retain conditions on Fund investments that are intended to result in such underlying investments being generally liquid and transparent. As stated above, the Fund:

(1) Proposes to reduce the Fund's minimum investment in investment grade securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets). The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because the Fund will continue to principally hold investment grade assets and, as stated above, the Adviser represents that the Fund will invest solely in non-investment grade securities that are liquid and for which intra-day quotes are readily available.

(2) Proposes to invest not more than 15% of its assets in securities rated B or below by S&P or equivalently rated by Moody's or Fitch. The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because, although the proposed rule change would increase the percentage of Speculative Debt in which the Fund may invest, and lowers from BB to B the minimum investment rating for such Speculative Debt, the Adviser represents that the Fund will invest solely in Speculative Debt securities that are liquid and for which intra-day quotes are readily available.

(3) Proposes to eliminate the current 20% limitation on investments in corporate bonds and include corporate bonds within the 70% minimum investment in Fixed Income Securities. As stated in the Prior Release, the Fund generally will limit its investment in corporate bonds to corporate bonds having a minimum par amount outstanding of not less than \$200 million. The Exchange believes that this proposal is consistent with the Act, and Section 6(b)(5) in particular, because, the Adviser represents that the Fund will invest solely in corporate debt

securities that are liquid and for which intra-day quotes are readily available.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Adviser represents that there is no change to the Fund's investment objective. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. The Adviser represents that the purpose of the proposed rule change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by: (1) Reducing the Fund's minimum intended investment in investment grade securities from 70% of Fund assets to 60% of Fund assets (and correspondingly, increase the percentage of Fund assets that may be invested in non-investment grade securities, including unrated securities that the Adviser or Sub-Adviser believes are of comparable quality to rated securities from 30% to 40% of Fund assets); (2) increasing the percentage of the Fund's Speculative Debt from currently not more than 10% of Fund assets invested in securities rated BB or below by S&P or equivalently rated by Moody's or Fitch to not more than 15% of Fund assets invested in securities rated B or below by S&P or equivalently rated by Moody's or Fitch; and (3) eliminating the current 20% limitation on investments in corporate bonds.

The Adviser represents that the Proposed Amendments are therefore consistent with the Exemptive Order under the 1940 Act and the rules thereunder. Except for the changes noted regarding the Proposed Amendments above, all other representations made in the Prior Release remain unchanged.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the continued listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

#### *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 purpose of the Act. The Exchange believes the proposed rule change will permit the Adviser and Sub-Adviser

additional flexibility in achieving the Fund's investment objective, and will permit the Fund to better compete with other issues of Managed Fund Shares that are subject to investment parameters and limitations similar to those in the Proposed Amendments.

#### *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**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>18</sup> and Rule 19b-4(f)(6) thereunder.<sup>19</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>20</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

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

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 No. SR-NYSEArca-2013-117 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 No. SR-NYSEArca-2013-117. 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 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEArca-2013-117 and should be submitted on or before December 3, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Kevin M. O'Neill,**

*Deputy Secretary.*

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

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>21</sup> 17 CFR 200.30-3(a)(12).