

Commission received no comment letters about the proposed rule change. This order approves the proposed rule change.

## II. Description of the Proposed Rule Change

The proposed rule change consists of an interpretive notice regarding Rule G-37, on political contributions and prohibitions on municipal securities business.<sup>4</sup> Under Rule G-37, certain contributions to elected officials of municipal securities issuers made by brokers, dealers and municipal securities dealers (“dealers”), municipal finance professionals (“MFPs”) associated with dealers, and political action committees (“PACs”) controlled by dealers and their MFPs (“dealer-controlled PACs”)<sup>5</sup> may result in prohibitions on dealers from engaging in municipal securities business with such issuers for a period of two years from the date of any triggering contributions.

Rule G-37 requires dealers to disclose certain contributions to issuer officials, state or local political parties, and bond ballot campaigns, as well as other information, on Form G-37 to allow public scrutiny of such contributions and the municipal securities business of a dealer. In addition, dealers and MFPs generally are prohibited from soliciting others (including affiliates of the dealer or any PACs) to make contributions to officials of issuers with which the dealer is engaging or seeking to engage in municipal securities business, or to political parties of a state or locality where the dealer is engaging or seeking to engage in municipal securities business. Dealers and MFPs are prohibited from circumventing Rule G-37 by direct or indirect actions through any other persons or means.<sup>6</sup>

<sup>4</sup> Rule G-37 defines municipal securities business as: (i) The purchase of a primary offering of municipal securities from an issuer on other than a competitive bid basis; (ii) the offer or sale of a primary offering of municipal securities on behalf of an issuer; (iii) the provision of financial advisory or consultant services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis; or (iv) the provision of remarketing agent services to or on behalf of an issuer with respect to a primary offering of municipal securities in which the dealer was chosen to provide such services on other than a competitive bid basis.

<sup>5</sup> The MSRB has previously stated that the matter of control depends upon whether or not the dealer or the MFP has the ability to direct or cause the direction of the management or policies of the PAC (MSRB Question & Answer No. IV. 24—Dealer Controlled PAC).

<sup>6</sup> Rule G-37(d) provides that no broker, dealer or municipal securities dealer or any municipal finance professional shall, directly or indirectly, through or by any other person or means, do any act which would result in a violation of sections (b) or (c) of the rule. Section (b) relates to the ban on

Due to changes in the financial markets since the adoption of Rule G-37 and recent market turmoil, many dealers have become affiliated with a broad range of other entities in increasingly diverse organizational structures. Some of these affiliated entities (including but not limited to banks, bank holding companies, insurance companies and investment management companies) have formed or otherwise maintain relationships with PACs (“affiliated PACs”) and other political organizations, many of which may make contributions to issuer officials. Such relationships raise questions regarding the extent to which affiliated PACs may effectively be controlled by dealers or their MFPs and thereby constitute dealer-controlled PACs whose contributions are subject to Rule G-37. Further, such relationships raise concerns regarding whether the contributions of such affiliated PACs, even if not viewed as dealer-controlled PACs, may be used by dealers or their MFPs to circumvent Rule G-37 as indirect contributions for the purpose of obtaining or retaining municipal securities business. As a result, the MSRB has filed the proposed rule change to provide additional guidance with regard to the potential for affiliated PACs to be viewed as dealer-controlled PACs. A more complete description of the proposal is contained in the Commission’s Notice.

The MSRB has requested an effective date for the proposed rule change of sixty days after Commission approval of the proposed rule change.

## III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to the MSRB<sup>7</sup> and, in particular, the requirements of Section 15B(b)(2)(C) of the Exchange Act<sup>8</sup> and the rules and regulations thereunder. Section 15B(b)(2)(C) of the Exchange Act requires, among other things, that the MSRB’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 regulating, clearing, settling,

business and Section (c) relates to the prohibition on soliciting and coordinating contributions.

<sup>7</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. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78o-4(b)(2)(C).

processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.<sup>9</sup> The Commission believes that the proposed rule change is consistent with the Exchange Act because it will help to inhibit practices constituting real and perceived attempts to influence the awarding of municipal securities business through contributions made by or through dealer-affiliated PACs. The Commission also believes that the proposed rule change will facilitate dealer compliance with Rule G-37 and Rule G-27, on supervision. The proposal will become effective sixty days after Commission approval of the proposed rule change, as requested by the MSRB.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,<sup>10</sup> that the proposed rule change (SR-MSRB-2010-07), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63076; File No. SR-NYSEArca-2010-79]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change To List and Trade Shares of Cambria Global Tactical ETF

October 12, 2010.

#### I. Introduction

On August 23, 2010, 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 Cambria Global Tactical ETF (“Fund”) under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the

<sup>9</sup> *Id.*

<sup>10</sup> 15 U.S.C. 78s(b)(2).

<sup>11</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.

**Federal Register** on September 8, 2010.<sup>3</sup> The Commission received no comments on the proposal. 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 under NYSE Arca Equities Rule 8.600, which governs the listing of Managed Fund Shares.<sup>4</sup> 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>5</sup> The investment advisor to the Fund is AdvisorShares Investments, LLC (“Advisor”), and the day-to-day portfolio management of the Fund is provided by the sub-advisor to the Fund, Cambria Investment Management, Inc. (“Sub-Advisor”).<sup>6</sup> The Exchange represents that the Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600 and that the Fund will be in compliance with Rule 10A-3 under the Act,<sup>7</sup> as provided by NYSE Arca Equities Rule 5.3.

The Fund is a “fund of funds,” which means that the Fund seeks to invest primarily in other exchange-traded funds listed and traded in the United States (“Underlying ETFs”) and certain other exchange-traded products including, but not limited to, exchange-traded notes, exchange-traded currency trusts and closed-end funds. The Fund seeks to achieve its investment objective of preserving and growing capital from investments in the U.S. and foreign equity, fixed income, commodity and currency markets, independent of market direction, by producing absolute returns with reduced volatility and manageable risk and drawdowns. The Sub-Advisor will utilize a proprietary quantitative trend-following approach to actively manage the Fund’s portfolio. No effort is made by the Sub-Advisor to forecast future market trends or direction; rather, the Fund seeks to capture profits in these trends when and where they develop. The strategy is diversified across markets and

timeframes with strict risk control methods that are rules-based and systematic. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

Additional information regarding the Fund, the Shares, the Fund’s investment objective, strategies, methodology, and restrictions, the Advisor and Sub-Advisor, risks, fees and expenses, creations and redemptions of Shares, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.<sup>8</sup>

## III. Discussion and Commission’s Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>10</sup> which requires, among other things, that the Exchange’s rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission 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, which sets forth Congress’s finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line, and the Exchange will disseminate the Portfolio Indicative Value (“PIV”) at least every 15 seconds during the Core Trading Session through one or more major market data vendors. In addition, the Fund will make available on its website on each business day before commencement of the Core Trading Session the Disclosed Portfolio that will form the basis for the Fund’s calculation

of the net asset value (“NAV”).<sup>11</sup> 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 National Securities Clearing Corporation. The Fund’s website will also include additional quantitative information updated on a daily basis relating to trading volume, the prior business day’s reported NAV, mid-point of the bid/ask spread at the time of calculation of such NAV (the “Bid/Ask Price”),<sup>12</sup> and a calculation of the premium and discount of the Bid/Ask Price against the NAV and 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. Information regarding the 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, and the previous day’s closing price and trading volume information for the Shares will be published daily in the financial sections of newspapers.

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 necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Advisor and Sub-Advisor to the Fund are not affiliated with a broker-dealer.<sup>13</sup> The

<sup>11</sup> On a daily basis, the Advisor 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 financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange, Inc. (“NYSE”) (ordinarily 4:00 p.m. Eastern Time) on each business day.

<sup>12</sup> The Bid/Ask Price of the Fund is determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>13</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600. The Commission notes that Commentary .06 to NYSE Arca Equities Rule 8.600 requires that any investment advisers to the Fund that are affiliated with a broker-dealer are required to implement a fire-wall with respect to such broker-dealer regarding access to information concerning the composition of the portfolio. Commentary .06 to NYSE Arca Equities Rule 8.600 also requires that any personnel who make

<sup>3</sup> See Securities Exchange Act Release No. 62788 (August 30, 2010), 75 FR 54676 (“Notice”).

<sup>4</sup> See NYSE Arca Equities Rule 8.600.

<sup>5</sup> The Trust is registered under the Investment Company Act of 1940. On June 30, 2010, the Trust filed with the Commission a registration statement on Form N-1A (File Nos. 333-157876 and 811-22110) (“Registration Statement”).

<sup>6</sup> The Exchange represents that neither the Advisor nor the Sub-Advisor is affiliated with a broker-dealer. See Commentary .06 to NYSE Arca Equities Rule 8.600.

<sup>7</sup> 17 CFR 240.10A-3.

<sup>8</sup> See *supra* notes 3 and 5.

<sup>9</sup> In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

Commission also notes that the Exchange will obtain a representation from the Fund 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>14</sup> Additionally, if it becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such information is available to all market participants. Further, if the PIV is not being disseminated as required, the Exchange may halt trading during the day in which the interruption occurs; if the interruption persists past the day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.<sup>15</sup> Finally, 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>16</sup>

The Exchange has represented that the Shares are equity securities subject to the Exchange's 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'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.

(3) Prior to the commencement of trading, the Exchange will inform its 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 and that Shares

decisions on the Fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>14</sup> See NYSE Arca Equities Rule 8.600(d)(1)(B).

<sup>15</sup> See NYSE Arca Equities Rule 8.600(d)(2)(D). Trading in the Shares may also 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 comprising the Disclosed Portfolio and/or the financial instruments of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

<sup>16</sup> See NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

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 Opening and Late Trading Sessions when an updated PIV will not be calculated or publicly disseminated; (d) how information regarding the PIV 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.

(4) The Fund will be in compliance with Rule 10A-3 under the Act.<sup>17</sup>

(5) Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

In addition, the Commission notes that it has not received any comments regarding the proposed rule change.

For the forgoing reasons, the Commission believes that the Exchange's proposal to list and trade the Shares is consistent with the Act. This order is based on the Exchange's representations.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2010-79) be, and it hereby is, approved.

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

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63071; File No. SR-Phlx-2010-139]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Floor Broker Responsibilities

October 8, 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 October 5, 2010, NASDAQ OMX PHLX, Inc.

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

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<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.

("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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 amend Exchange Rule 1063, Responsibility of Floor Brokers, and Option Floor Procedure Advice ("OFPA") C-2, Options Floor Broker Management System: to: (i) Require floor brokers to enter specific identifying information on their orders; and (ii) amend the current language applicable to the entry of clearing information by floor brokers.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings>, 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 Exchange 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 purpose of the proposed rule change is to require floor brokers to enter certain identifying information on their orders to enhance the Exchange's audit trail to provide more specificity in identifying a market participant's executing order. The Exchange is proposing to require floor brokers<sup>3</sup> to

<sup>3</sup> An Options Floor Broker ("Floor Broker") is an individual who is registered with the Exchange for the purpose, while on the Options Floor, of accepting and executing options orders received from members and member organizations. An Options Floor Broker shall not accept an order from any other source unless he is the nominee of a member organization qualified to transact business