

Act,<sup>8</sup> which requires the rules of an exchange 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 Exchange believes that excluding Destination-on-Open orders from the application of market collars is appropriate in order to avoid the potential dislocation between the reference price for a market collar on a Destination-on-Open order and the market at the open of the regular trading session. Accordingly, the modifications to Exchange Rule 11.5 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.

The Exchange will issue an information circular to all Members prior to implementation, which will be on or about December 14, 2010.

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

The proposed rule change does not 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 Regarding the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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)<sup>9</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

<sup>8</sup> 15 U.S.C. 78f(b)(5).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)<sup>12</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay, as specified in Rule 19b-4(f)(6)(iii),<sup>13</sup> which would make the proposed rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>14</sup> The Commission notes that the proposal is based on the rules of another SRO that similarly excludes market on open orders from its market collar functionality.<sup>15</sup> Accordingly, the Commission designates the proposed rule change operative upon filing with the Commission.

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.

#### **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-EDGX-2010-24 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission,

of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has met this requirement.

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> *Id.*

<sup>14</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>15</sup> See *supra* note 7.

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-EDGX-2010-24. 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 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 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-EDGX-2010-24 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>16</sup>

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

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**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-63581; File No. SR-NYSEArca-2010-117]

#### **Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading Shares of the Grail Western Asset Ultra Short Duration ETF Under NYSE Arca Equities Rule 8.600**

December 20, 2010.

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>

<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.

notice is hereby given that, on December 13, 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 shares of the following under NYSE Arca Equities Rule 8.600: Grail Western Asset Ultra Short Duration ETF ("ETF" or "Fund"). 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 shares ("Shares") of the Grail Western Asset Ultra Short Duration ETF under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> The ETF will be an actively managed exchange traded fund and is a series of Grail Advisors ETF Trust

<sup>3</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); 60981 (November 10, 2009), 74 FR 59594 (November 18, 2009) (SR-NYSEArca-2009-79) (order approving listing of five fixed income funds of the PIMCO ETF Trust); 61365 (January 15, 2010), 75 FR 4124 (January 26, 2010) (SR-NYSEArca-2009-114) (order approving listing of Grail McDonnell Fixed Income ETFs).

("Trust"). The Trust is registered with the Commission as an investment company.<sup>4</sup>

#### **Description of the Shares and the Fund**

Grail Advisors, LLC is the Fund's investment manager ("Manager"). Western Asset Management Company is the sub-adviser ("Western Asset" or "Sub-Adviser") of the ETF. The Bank of New York Mellon Corporation is the administrator, Fund accountant, transfer agent and custodian for the ETF. ALPS Distributors, Inc. serves as the distributor of Creation Units for the Fund on an agency basis.

#### **Grail Western Asset Ultra Short Duration ETF**

According to the Registration Statement, the ETF's investment objective is maximum current income, consistent with preservation of capital and daily liquidity. The ETF invests, under normal circumstances, primarily in short-term, investment grade fixed income securities. The ETF will typically invest in money market securities and short-term debt securities, including U.S. treasuries and agencies, corporate and bank obligations, asset backed and mortgage backed instruments, commercial paper and other highly rated, short maturity securities. While the ETF may invest in securities of any maturity, under normal circumstances, the average duration of the portfolio is typically expected to be one year or less. Duration is a measure of the underlying portfolio's price sensitivity to changes in interest rates.

Western Asset employs an active, team-managed strategy and utilizes a top-down economic and interest rate outlook, combined with a bottom-up security selection process. When using a "top-down" approach, Western Asset looks first at broad economic factors and market conditions, such as prevailing and anticipated interest rates. On the basis of those factors and conditions, Western Asset selects what it views as optimal interest rates and maturities and chooses certain sectors or industries within the overall market. Western Asset then looks at individual issuers within those sectors or industries to select securities for the investment portfolio. While many of the ETF's investments are expected to be held until maturity, they may be sold depending on market conditions, opportunities and valuations. Western

<sup>4</sup> *See* Preliminary Prospectus on Form N-1A for the Trust, dated August 31, 2010 (File Nos. 333-148082 and 811-22154) (the "Registration Statement"). The descriptions of the ETF and the Shares contained herein are based on information in the Registration Statement.

Asset may sell a security before maturity when it is necessary to do so to meet redemption requests. A security may also be sold if Western Asset believes the issuer is no longer as creditworthy, or in order to adjust the average duration of the ETF's investment portfolio (for example, to reflect changes in Western Asset's expectations concerning interest rates), or when Western Asset believes there is superior value in other market sectors or industries.

The ETF invests primarily in investment grade securities (Baa or higher by Moody's; BBB or higher by Standard & Poor's) that are rated by at least one nationally recognized statistical rating organization rating that security, or if unrated, determined by Western Asset to be of comparable quality.

The ETF may invest in securities issued by the U.S. Government, its agencies and instrumentalities and repurchase agreements for these obligations, mortgage-backed and other asset-backed securities, and obligations of U.S. and non-U.S. banks and other foreign private issuers. In addition, the ETF may invest in obligations issued or guaranteed by the governments of Western Europe, Australia, Japan and Canada, and commercial paper, including asset-backed commercial paper. The ETF may only invest in U.S. dollar-denominated securities. It may also invest in securities of other investment companies. Under adverse market conditions, the ETF may, for temporary defensive purposes, invest up to 100% of its assets in cash or cash equivalents. Due to the short-term nature of many of the ETF's investments, the ETF may have an annual portfolio turnover rate over 100%.

As discussed below, the ETF may invest in derivative instruments, such as futures and interest rate, total return and credit default swaps. Investments in derivatives must be consistent with the ETF's investment objective and may only be used to manage risk and not to enhance leverage.

The ETF will not invest in non-U.S. equity securities.

#### **Investment Policies of the ETF**

The ETF (1) may not invest more than 5% of its total assets (taken at market value) in securities of any one issuer, other than obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities, or purchase more than 10% of the voting securities of any one issuer, with respect to 75% of the ETF's total assets; and (2) regarding concentration, may not invest

more than 25% of its total assets in the securities of companies primarily engaged in any one industry or group of industries provided that: (i) This limitation does not apply to obligations issued or guaranteed by the U.S. Government, its agencies and instrumentalities; and (ii) municipalities and their agencies and authorities are not deemed to be industries.

The ETF may not invest more than 15% of its net assets in: (1) Illiquid securities; and (2) Rule 144A securities, including time deposits and repurchase agreements that mature in more than seven days. For this purpose, "illiquid securities" are securities that the ETF may not sell or dispose of within seven days in the ordinary course of business at approximately the amount at which the ETF has valued the securities.

The ETF may invest in mortgage- or other asset-backed securities. Mortgage backed securities in which the Fund invests will be investment grade. Mortgage-related securities include mortgage pass-through securities, collateralized mortgage obligations ("CMOs"), commercial mortgage-backed securities, mortgage dollar rolls, CMO residuals, stripped mortgage-backed securities ("SMBs") and other securities that directly or indirectly represent a participation in, or are secured by and payable from, mortgage loans on real property. The ETF will not purchase mortgage-related securities or any other assets which in the Sub-Adviser's opinion are illiquid if, as a result, more than 15% of the value of the ETF's net assets will be illiquid.

The ETF may invest in unregistered securities, including Rule 144A securities, that are purchased directly from the issuer or in the secondary market and are subject to limitations on resale.

The ETF may hold preferred stocks. The ETF may purchase or otherwise receive warrants or rights. The ETF may enter into repurchase agreements with banks and broker-dealers. The ETF may engage in reverse repurchase agreements as a means of raising cash to satisfy redemption requests or for other temporary emergency purposes. The ETF may hold zero coupon securities and bank obligations, which include certificates of deposit, bankers' acceptances, and fixed time deposits. The ETF may invest in the securities of other investment companies to the extent permitted by law. The ETF may hold corporate and other debt and fixed income securities; U.S. Government securities; municipal securities; and real estate investment trusts.

Detailed descriptions of the ETF and the Shares; procedures for creating and

redeeming Shares; transaction fees and expenses; ETF investments; dividends and distributions; taxes; risks; and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the Web site for the Fund (<http://www.grailadvisors.com>).

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>5</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 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. The Fund's Manager and Sub-Adviser each is affiliated with a broker-dealer and has implemented a fire wall with respect to the affiliated broker-dealer regarding access to information concerning the composition and/or changes to a portfolio.<sup>6</sup> Any additional Fund sub-

<sup>5</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 Manager and Sub-adviser 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>6</sup> The Exchange represents that Grail Advisors, LLC, as the investment adviser of the Fund, and Western Asset, the Sub-Adviser, 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 adviser 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

advisers that are affiliated with a broker-dealer 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. The Manager and Sub-Adviser, each as a Reporting Authority under NYSE Arca Equities Rule 8.600(c)(4), have implemented and will maintain, or are subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio.

#### Creations and Redemptions of Shares

As described in the Registration Statement, Shares can be purchased by or through an Authorized Participant directly from the ETF only in Creation Units, currently 50,000 Shares, or multiples thereof. Creation Units may be purchased in exchange for a Fund Deposit, which consists of (i) all cash (the "Cash Value"), (ii) a basket of certain in-kind securities and cash ("Partial Cash Value," and together with the in-kind securities ("In-Kind/Cash Basket") or (iii) a basket of securities (the "In-Kind Creation Basket") and a Balancing Amount. In all instances the value of the Fund Deposit will be equal to the value of the Creation Unit.<sup>7</sup>

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the ETF through the Transfer Agent and only on a Business Day. Creation Units generally may be redeemed in exchange for a "Fund Redemption", which consists of

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 adviser 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 adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

<sup>7</sup> For an order involving a Creation Unit to be effectuated at the ETF's NAV on a particular day, it must be received by the Distributor by or before the deadline for such order ("Order Cut-Off Time"). The Order Cut-Off Time for creation and redemption orders for the ETF are 2 p.m. Eastern Time for In-Kind/Cash Basket for Cash Value, 2 p.m. Eastern Time for Partial Cash Value and In-Kind/Cash Basket, and 4 p.m. Eastern Time for In-Kind Creation Basket.

(i) A Cash Value (ii) a basket of in-kind securities and Partial Cash Value or (iii) a basket of securities (“In-Kind Redemption Basket”) and a Balancing Amount, in all instances equal to the value of a Creation Unit.

The ETF imposes a “Transaction Fee” on purchases or redemptions of Creation Units to be paid by the purchaser or redeemer in cash.

#### Availability of Information

The ETF’s Web site (<http://www.grailadvisors.com>), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the ETF that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the ETF: (1) 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>8</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<sup>9</sup> on the Exchange, the Trust will disclose on its Web site the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio”) held by the ETF that will form the basis for the ETF’s calculation of NAV at the end of the business day<sup>10</sup> as of the close of regular trading on the New York Stock Exchange, generally 4 p.m., Eastern Time. The Web site and information will be publicly available at no charge.

In addition, for the ETF, an estimated value, defined in NYSE Arca Equities Rule 8.600 as the “Portfolio Indicative Value,” that reflects an estimated intraday value of the ETF’s portfolio, will be disseminated through one or

more major market data vendors. The Portfolio Indicative Value will be based upon the current value for the components of the Disclosed Portfolio, provided that illiquid securities, mortgage-related securities and other asset-backed securities will be valued based on the prior business day’s closing value, which is the most current value available for such securities. The Portfolio Indicative Value will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. According to the Registration Statement, this approximate value should not be viewed as a “real-time” update of the NAV of the ETF because the approximate value may not be calculated in the same manner as the NAV, which is computed once a day. According to the Registration Statement, the Portfolio Indicative Value is an approximate per-Share value of the ETF’s portfolio holdings and does not necessarily reflect the precise composition of the current portfolio of securities held by the ETF at a particular point in time. The quotations for certain investments may not be updated during U.S. trading hours if such holdings do not trade in the U.S., except such quotations may be updated to reflect currency fluctuations.

Information regarding market price and volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. 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 high-speed line.

On a daily basis, the ETF will disclose on the ETF’s Web site for each portfolio security or other financial instrument of the ETF 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.

Investors can also obtain the Trust’s Statement of Additional Information (“SAI”), the ETF’s 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 is and 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. Additional information regarding the Shares and the ETF, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the ETF that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

#### Initial and Continued Listing

The Shares will be subject to NYSE Arca Equities Rule 8.600(d), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Shares must 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 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 per Share will be calculated daily and that the net asset value and the Disclosed Portfolio will be made available to all market participants at the same time.

#### 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 ETF. Shares of the ETF will be halted if the “circuit breaker” parameters in NYSE Arca Equities Rule 7.12 are reached. Trading 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 comprising the Disclosed Portfolio and/or the financial instruments of the ETF; 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 ETF may be halted.

<sup>8</sup> The Bid/Ask Price of the ETF 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 ETF and its service providers.

<sup>9</sup> The Core Trading Session is 9:30 a.m. to 4 p.m. Eastern time.

<sup>10</sup> Under accounting procedures followed by the ETF, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Notwithstanding the foregoing, portfolio trades that are executed prior to the opening of the Exchange on any business day may be booked and reflected in NAV on such business day. Accordingly, each ETF 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.

<sup>11</sup> See 17 CFR 240.10A–3.

## 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 \$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 includes 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 who are members of ISG.<sup>12</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 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 Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the ETF is 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 4:00 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>13</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 additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in NYSE Arca Equities Rule 8.600 are intended to protect investors and the public interest.

## 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-2010-117 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 Number SR-NYSEArca-2010-117. 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

<sup>12</sup> For a list of the current members of ISG, see <http://www.isgportal.org>. The Exchange notes that many of the components of the Disclosed Portfolio for the ETF may not trade on exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>13</sup> 15 U.S.C. 78f(b)(5).

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]

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## 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.