

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

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) of the Act⁷ and Rule 19b-4(f)(6)(iii) thereunder.⁸

At any time within 60 days of the filing of the 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. Please include File Number SR-NYSEArca-2011-03 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-2011-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549-1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.⁹ 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-2011-03 and should be submitted on or before February 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63751; File No. SR-FINRA-2011-004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to the Trading Activity Fee Rate for Transactions in Asset-Backed Securities

January 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 10, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. 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

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to provide an alternative method of calculating the Trading Activity Fee ("TAF") for transactions in Asset-Backed Securities.

The text of the proposed rule change is available on FINRA's Web site at <http://www.finra.org>, at the principal office of FINRA, on the Commission's Web site at <http://www.sec.gov>, 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, FINRA 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 these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 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 of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

⁹ The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

¹⁰ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, which include examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.³ In general, the TAF is assessed for the sale of all exchange registered securities wherever executed (except debt securities that are not TRAC-Eligible Securities), over-the-counter equity securities, security futures, TRAC-Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to MSRB reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.⁴ The current TAF rates are \$0.000075 per share for each sale of a covered equity security, with a maximum charge of \$3.75 per trade; \$0.002 per contract for each sale of an option; \$0.04 per contract for each round turn transaction of a security future; and \$0.00075 per bond for each sale of a covered TRAC-Eligible Security and/or municipal security, with a maximum charge of \$0.75 per trade. In addition, if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no TAF is assessed.

Currently, when reporting the size of a corporate bond transaction to the Trade Reporting and Compliance Engine ("TRACE"), a member reports the number of bonds (e.g., 10 bonds), and the TRACE System, which is programmed to reflect that one bond equals \$1,000 par value, calculates the total dollar volume of the transaction (e.g., 10 bonds x \$1,000 = \$10,000).⁵ Because of this reporting structure, the TAF is assessed on a per-bond basis, but the number of bonds is a proxy for the size of the total dollar volume of a transaction in \$1,000 increments.

Earlier this year, the SEC approved amendments to the TRACE reporting requirements to include transactions in Asset-Backed Securities.⁶ Under the amendments, Asset-Backed Securities will be TRAC-Eligible Securities, and

transactions in Asset-Backed Securities will generally be reportable to TRACE and, thus, subject to the TAF. The effective date of the amendments is May 16, 2011.⁷

Although some Asset-Backed Securities are structured like conventional corporate bonds (i.e., generally, one bond has a par (or principal) value of \$1,000), many are structured differently. For example, many Asset-Backed Securities are based on financial assets that amortize, and the principal (or face) value declines over time. Accordingly, transactions in Asset-Backed Securities will not be reported to TRACE on a "per-bond" basis like conventional corporate bonds, but rather will be reported based on the original principal (or face) value of the underlying security or the Remaining Principal Balance.⁸

FINRA is proposing to conform the TAF rate for sales of Asset-Backed Securities to make it consistent with how such transactions are reported to TRACE rather than use the existing per-bond rate. Consequently, FINRA is proposing to base the TAF for sales of Asset-Backed Securities on the size of the transaction as reported to TRACE (i.e., par value, or, where par value is not used to determine the size of the transaction, the lesser of original face value or Remaining Principal Balance) at a rate of \$0.00000075 times the size of the transaction as reported to TRACE, with a maximum charge of \$0.75 per trade. Because, under the per-bond method of calculation, one bond represents \$1,000 in par value, the TAF rate across all Reportable TRACE Transactions subject to the TAF will be the same, regardless of whether the transaction is in corporate bonds or Asset-Backed Securities.

In addition to the amendment to the TAF rate, FINRA is proposing technical changes to capitalize certain terms in the TAF rule to identify terms that are defined elsewhere in the FINRA Rulebook (e.g., TRAC-Eligible Security) and to correct one rule cross-reference.

The effective date of the proposed rule change will be the date the proposed rule changes in SR-FINRA-2009-065 become effective, which is

⁷ See *Regulatory Notice* 10-55 (October 2010). See also Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010).

⁸ FINRA Rule 6710(aa) defines "Remaining Principal Balance" for an Asset-Backed Security backed by a pool of mortgages or other assets that are self-amortizing, as "the total unpaid principal balance of all such mortgages, or the equivalent remaining value of such self-amortizing assets held in the asset pool, at a specific time, such as the Time of Execution." See SR-FINRA-2009-065.

currently anticipated to be May 16, 2011.⁹

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. FINRA believes that the proposed rule change will clarify the application of the TAF to sales of Asset-Backed Securities and will ensure these transactions are treated in the same way as transactions reported to TRACE in other types of fixed income securities.

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

FINRA does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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 (i) as the Commission may designate up to 90 days of such date 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 shall: (a) By order approve or disapprove such 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:

⁹ See *Regulatory Notice* 10-55 (October 2010). See also Securities Exchange Act Release No. 63223 (November 1, 2010), 75 FR 68654 (November 8, 2010); Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010); *Regulatory Notice* 10-23 (April 2010).

¹⁰ 15 U.S.C. 78o-3(b)(5).

³ In addition to the TAF, the other member regulatory fees are the Gross Income Assessment and the Personnel Assessment.

⁴ See FINRA By-Laws, Schedule A, § 1(b)(2).

⁵ See FINRA Rule 6730(c)(2), (d)(2).

⁶ See Securities Exchange Act Release No. 61566 (February 22, 2010), 75 FR 9262 (March 1, 2010). See also *Regulatory Notice* 10-23 (April 2010).

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. Please include File Number SR-FINRA-2011-004 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-FINRA-2011-004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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-FINRA-2011-004 and should be submitted on or before February 17, 2011.

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

Elizabeth M. Murphy,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-63737; File No. SR-NYSEArca-2010-107]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading Shares of the AdvisorShares Active Bear ETF

January 19, 2011.

I. Introduction

On November 23, 2010, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares ("Shares") of the AdvisorShares Active Bear ETF (the "Fund") under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on December 13, 2010.³ The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. 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.⁴ The investment advisor to the Fund is AdvisorShares Investments, LLC (the "Advisor"). Ranger Alternative Management, L.P. is the sub-advisor ("Sub-Advisor") to the Fund and the portfolio manager. Foreside Fund Services LLC is the distributor for the Fund. The Bank of New York Mellon Corporation is the administrator,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63447 (December 7, 2010), 75 FR 77681 ("Notice").

⁴ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On September 22, 2010, the Trust filed with the Commission Post-Effective Amendment No. 12 to Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (the "Registration Statement"). The Trust has also filed an Amended Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812-13677 dated May 28, 2010). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

custodian, transfer agent and fund accounting agent for the Fund.

The Fund's investment objective is to seek capital appreciation through short sales of domestically-traded equity securities. The Sub-Advisor seeks to achieve that objective by short selling a portfolio of liquid mid- and large-cap U.S. exchange-traded equity securities, exchange-traded funds ("ETFs") registered pursuant to the 1940 Act and exchange-traded products ("ETPs"), including exchange-traded notes ("ETNs").⁵ The Fund generally targets composition of 20-50 equity short positions, with an average individual position size generally ranging between 2-7% of the aggregate portfolio exposure. ETPs may be used to gain exposure in instances when the Sub-Advisor has a more bearish posture with respect to the broad market and will typically range between 10-15% of the Fund's portfolio. ETFs registered pursuant to the 1940 Act or other exchange-traded products not registered pursuant to the 1940 Act will be utilized to manage exposure to broad indexes or certain sectors. The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. To respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, for extended periods if desired, in high-quality short-term debt securities and money market instruments, depending on the Sub-Advisor's assessment of market conditions.

The Exchange represents that the Shares will be subject to NYSE Arca Equities Rule 8.600, which includes the initial and continued listing criteria applicable to Managed Fund Shares,⁶ and will comply with Rule 10A-3 under the Act,⁷ as provided by NYSE Arca Equities Rule 5.3. Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and

⁵ The Fund may sell short only equity securities traded in the U.S. on registered exchanges. The Fund will not purchase or borrow illiquid securities or securities registered pursuant to Rule 144A under the Securities Act of 1933.

⁶ The Exchange states that a minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange, and the Exchange will obtain a representation from the issuer of the Shares that the net asset value ("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. See Notice, *supra* note 3.

⁷ 17 CFR 240.10A-3.

¹¹ 17 CFR 200.30-3(a)(12).