

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-67195; File No. SR-NYSEArca-2012-51)

June 13, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Accuvest Global Long Short ETF (Formerly the Mars Hill Global Relative Value ETF)

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> notice is hereby given that, on May 31, 2012, 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 substantially prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 reflect a change to the means of achieving the investment objective, and the size of a Creation Unit (as described below) applicable to, the Accuvest Global Long Short ETF (“Fund”) (formerly known as the Mars Hill Global Relative Value ETF). The text of the proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

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

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission has approved listing and trading on the Exchange of shares (“Shares”) of the Mars Hill Global Relative Value ETF, a series of AdvisorShares Trust (“Trust”),<sup>5</sup> under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares. The Shares are offered by 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 company.<sup>6</sup>

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<sup>5</sup> See Securities Exchange Act Release No. 61842 (April 5, 2010), 75 FR 18554 (April 12, 2010) (SR-NYSEArca-2010-10) (“Prior Order”). See also Securities Exchange Act Release No. 61683 (March 10, 2010), 75 FR 13194 (March 18, 2010) (SR-NYSEArca-2010-10) (“Prior Notice,” and together with the Prior Order, “Prior Release”).

<sup>6</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”) (15 U.S.C. 80a-1). On December 1, 2011, the Trust filed with the Commission an amendment to its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) (“1933 Act”) and under the 1940 Act relating to the Fund (File Nos. 333-157876 and 811-22110) (as amended, “Registration Statement”). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812-13488) (“Exemptive Order”).

The investment adviser to the Fund is AdvisorShares Investments, LLC (“Adviser”). On December 1, 2011, the sub-adviser to the Fund changed from Mars Hill Partners, LLC to Accuvest Global Advisors LLC (“Accuvest” or “Sub-Adviser”), and the name of the Fund changed to the Accuvest Global Long Short ETF. Shareholders of the Fund were notified of the change to the Sub-Adviser and the name of the Fund in an amendment to the Registration Statement on Form N-1A on December 1, 2011. The Adviser and Sub-Adviser are not affiliated with a broker-dealer.

In this proposed rule change, the Exchange proposes to reflect a change in the Registration Statement to the description of the measures the Sub-Adviser will utilize to implement the Fund’s investment objective.<sup>7</sup> As reflected in the Prior Release, the investment objective of the Fund is to provide average annual returns in excess of the total return of the MSCI World Index (“Index”), with comparable volatility and little to no correlation with the Index. The Registration Statement states that the investment objective of the Fund is to provide average annual returns in excess of the total return of the Index, deleting the words “with comparable volatility and little to no correlation with the Index.”

The Adviser seeks to make the following changes to representations made in the Prior Release:

(1) According to the Prior Release, the Sub-Adviser seeks to achieve the Fund’s investment objective by taking long positions in the Underlying ETFs that invest in what it

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<sup>7</sup> The changes described herein were effective upon filing with the Commission of an amendment to the Trust’s Registration Statement, dated December 1, 2011. See note 6, supra. The Adviser represents that, with the exception of the increase in the size of a Creation Unit from 25,000 Shares to 50,000 Shares or more, as described in note 8, infra, the Adviser and Sub-Adviser have managed and will continue to manage the Fund in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change is operative.

believes to be the most relatively attractive global regions and countries within those regions, and by establishing an equivalent dollar amount of short positions in the Underlying ETFs that invest in what it believes to be the most relatively unattractive global regions and countries within those regions. The Registration Statement was amended to state that the Sub-Adviser seeks to achieve the Fund's investment objective by taking long positions in the Underlying ETFs that invest in what it believes to be the most relatively attractive global regions and countries within those regions, and by taking short positions, by entering into short sales, in the Underlying ETFs that invest in what it believes to be the most relatively unattractive global regions and countries within those regions. Thus, the Sub-Adviser no longer would take into account the dollar equivalency of the short positions. The purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by altering the Fund's long positions based on the Sub-Adviser's assessment of the relative attractiveness or unattractiveness of global regions without having to establish dollar equivalency with the Fund's short positions, and vice versa.

(2) According to the Prior Release, by maintaining a core portfolio construction of equal long and short dollar exposure, the Sub-Adviser seeks to minimize the influence of directional trends and market exposure ("beta"), and seeks to profit from the relative performance between long and short positions in global regions, countries, styles, or sectors. The Prior Release also stated that, from time-to-time, the Sub-Adviser may also add directional exposure of up to 50% net long or net short exposure on top of its core long/short portfolio, and that, in doing so, the Sub-Adviser seeks to generate additional profits for the Fund by being net long when stock markets are rising and net short when markets are falling.

In eliminating the equivalent position requirement, as described in (1) above, under this proposal the Sub-Adviser would no longer seek to minimize the influence of directional trends and beta. In addition, the representation in the preceding paragraph was revised in the Registration Statement to state that, in establishing the long and short positions referenced above, the Fund seeks to profit from the relative performance between the long and short positions in global regions, countries, styles, or sectors. From time to time, the Fund may have directional exposure to seek to profit by being net long when stock markets are rising and net short when markets are falling. The purpose of this change is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by focusing on the relative performance between long and short positions in global regions, countries, styles, or sectors, rather than equal long and short dollar exposure. The Sub-Adviser also could establish added directional exposure of any amount based on the Sub-Adviser's market assessment, and, without the 50% net long or net short exposure limitation, in order to maximize potential returns, in furtherance of the Fund's investment objective.

The Adviser represents that, while the Fund's investment objective is being slightly revised, the Adviser believes the investment objective is not changing in a significant way because (1) the Fund will continue to aim to achieve average annual returns in excess of the total return of the Index; (2) the Fund will continue to take long and short positions in the securities in which it invests, but the revised representations will provide additional flexibility to the Sub-Adviser to meet the Fund's stated investment objective by focusing on the relative performance between long and short positions in global regions, countries, styles, or sectors, rather than equal long and short dollar exposure or limited added directional exposure; and (3) the Fund will continue to assess the most relatively attractive or unattractive global regions and countries

within those regions, respectively, but the revised representations will provide a better opportunity for the Fund to maximize potential returns for investors based primarily on the Adviser's and Sub-Adviser's assessment of such relative attractiveness or unattractiveness. The Adviser believes the revised representations will permit the Adviser and Sub-Adviser, through such additional flexibility, to better achieve the Fund's stated investment objective to achieve average annual returns in excess of the total return of the Index.<sup>8</sup>

Except for the changes noted above, all other representations made in the Prior Release remain unchanged, including representations regarding implementation of "fire walls" by any additional Fund advisers and sub-advisers affiliated with a broker-dealer, and Underlying ETFs in which the Fund invests. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600. All terms referenced but not defined herein are defined in the Prior Release.

## 2. Statutory Basis

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<sup>8</sup> The Exchange notes that the Prior Notice stated that the Trust will issue and sell Shares of the Fund only in Creation Units of 25,000 Shares on a continuous basis at their net asset value next determined after receipt, on any Business Day (as defined in the Registration Statement). The size of a Creation Unit was increased to 50,000 Shares from 25,000 Shares prior to the Fund's initial offering and commencement of listing and trading on the Exchange, and the change was reflected in an amendment to the Trust's registration statement on Form N-1A under the 1933 Act and 1940 Act, dated March 16, 2010 (File Nos. 333-157876 and 811-22110), which reflects the 50,000 Share Creation Unit size. The Adviser represents that the 50,000 Share Creation Unit size is consistent with the Fund's Exemptive Order, which does not specifically limit the Fund's Creation Unit size. The Exchange notes that the Commission has approved the listing and trading of other issues of Managed Fund Shares that have applied a minimum Creation Unit size of 50,000 shares or greater. See, e.g., Securities Exchange Act Release Nos. 65458 (September 30, 2011), 76 FR 62112 (October 6, 2011) (SR-NYSEArca-2011-54) (order approving listing and trading of WisdomTree Dreyfus Australia and New Zealand Debt Fund); 66112 (January 5, 2012), 77 FR 1761 (January 11, 2012) (SR-NYSEArca-2011-80) (order approving listing and trading of Rockledge SectorSAM ETF).

The basis under the Act<sup>9</sup> for this proposed rule change is the requirement under Section 6(b)(5)<sup>10</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 prevent fraudulent and manipulative acts and practices in that the Shares will continue to be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Index, which is referenced in the Fund's investment objective, is a global, broad-based index of large capitalization companies. The Fund invests in Underlying ETFs that are primarily index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Underlying ETFs in which the Fund invests will be traded on a U.S. national securities exchange. Except for Underlying ETFs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

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, while the investment objective of the Fund is being slightly revised, it is not changing in a significant way. The Adviser represents that the purpose of the change relating to establishing long and short positions without reference to a dollar equivalency requirement is to provide additional flexibility to the Sub-Adviser to meet the Fund's investment objective by focusing on the relative

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<sup>9</sup> 15 U.S.C. 78a.

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

performance between long and short positions in global regions, countries, styles, or sectors, rather than equal long and short dollar exposure or limited added directional exposure.

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 the Fund invests in Underlying ETFs that are primarily index-based ETFs that hold substantially all of their assets in securities representing a specific index. The Underlying ETFs in which the Fund invests are traded on a U.S. national securities exchange. The additional flexibility afforded to the Adviser and Sub-Adviser under the proposed change will permit the Adviser and Sub-Adviser to better achieve provide [sic] the Fund's objective to achieve average annual returns in excess of the total return of the MSCI World Index. Such added flexibility also will provide a better opportunity for the Fund to maximize potential return for investors based primarily on the Adviser's and Sub-Adviser's assessment of the most relatively attractive or unattractive global regions and countries within those regions, respectively. Except for the changes noted above, all other representations made in the Prior Release remain unchanged.

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

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 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, provided that the self-regulatory organization has given the Commission written notice of its intent to file 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(6) thereunder.<sup>12</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission notes that, under the proposal, the Fund will continue to: (1) aim to achieve average annual returns in excess of the total return of the Index; (2) take long and short positions in the securities in which it invests, but with additional flexibility to meet its stated investment objective by focusing on the relative performance between long and short positions in global regions, countries, styles, or sectors, rather than equal long and short dollar exposure or limited added directional exposure; and (3) assess the most relatively attractive or unattractive global regions and countries within those regions, respectively, but with a better opportunity to maximize potential returns for investors based primarily on the Adviser's and Sub-Adviser's assessment of such relative attractiveness or unattractiveness. The Commission further notes that, except for the changes noted herein, all other representations made in the Prior Release

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<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(6). The Commission notes that the Exchange has satisfied the five-day pre-filing notice requirement.

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

remain unchanged, including representations regarding implementation of “fire walls” by any additional Fund advisers and sub-advisers affiliated with a broker-dealer and Underlying ETFs in which the Fund invests. In addition, the Fund will continue to comply with all initial and continued listing requirements under NYSE Arca Equities Rule 8.600.

For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues that should delay the implementation of the Fund’s proposed changes. In addition, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, as a waiver would allow the Advisor and Sub-Advisor the flexibility to invest in ways they believe will result in greater returns for investors, with the goal of achieving average annual returns in excess of the total return of the Index, without undue delay.<sup>14</sup> Accordingly, the Commission waives the 30-day operative delay requirement.

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:

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<sup>14</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- 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-2012-51 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-2012-51. 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 website (<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 Section, 100 F Street, NE, Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet website at [www.nyse.com](http://www.nyse.com). 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-2012-51 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).