

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90323; File No. SR-NYSEArca-2020-94)

November 3, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF under Rule 8.900-E

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 20, 2020, NYSE Arca, Inc. (“NYSE Arca” 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the following under Rule 8.900-E (Managed Portfolio Shares): AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF. The proposed change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

NYSE Arca Rule 8.900-E permits the listing and trading, or trading pursuant to unlisted trading privileges ("UTP"), of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade Managed Portfolio Shares of the AdvisorShares Q Portfolio Blended Allocation ETF and AdvisorShares Q Dynamic Growth ETF (each a "Fund" and, collectively, the "Funds") under Rule 8.900-E.

⁴ Rule 8.900-E(c)(1) provides that the term "Managed Portfolio Share" means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

Description of the Funds and the Trust

The shares of each Fund (the “Shares”) will be issued by the 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 company.⁵ The investment adviser to each Fund will be AdvisorShares Investments, LLC (the “Adviser”). The investment sub-advisor to each Fund will be ThinkBetter, LLC. Foreside Fund Services, LLC (the “Distributor”) will serve as the distributor of each of the Funds’ Shares. All statements and representations made in this filing regarding (a) the description of the portfolio or reference assets, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 8.900-E(b)(1).

Rule 8.900-E(b)(4) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.⁶ Any person related to the investment adviser or

⁵ The Trust is registered under the 1940 Act. On September 11, 2020, the Trust filed a registration statement on Form N-1A under the Securities Act of 1933 (the “1933 Act”) and the 1940 Act for 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, in part, on the Registration Statement. The Trust has filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Exemptive Application”) (File No. 812-15146). The Exchange will not commence trading in Shares of the Funds until the Commission has issued an order granting the exemptions requested in the Exemptive Application.

⁶ Rule 8.900-E(c)(5) provides that the term “Creation Basket” means, on any given business day, the names and quantities of the specified instruments (and/or an amount of

Investment Company who makes decisions pertaining to the Investment Company's portfolio composition or has access to information regarding the Investment Company's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.

Rule 8.900-E(b)(4) is similar to Commentary .03(a)(i) and (iii) to Rule 5.2-E(j)(3); however, Commentary .03(a) 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.⁷ Rule 8.900-E(b)(4) is also similar to Commentary .06 to Rule 8.600-E related to Managed Fund Shares, except that Rule

cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

⁷ 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 Adviser and its related personnel will be 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. 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 violations, 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. The Funds will also be required to comply with Exchange rules relating to disclosure, including Rule 5.3-E(i).

8.900-E(b)(4) relates to establishment and maintenance of a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to an Investment Company’s portfolio and Creation Basket, and not just to the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer. The Adviser has implemented and will maintain a “fire wall” with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to a Fund’s portfolio and/or Creation Basket.

In the event (a) the Adviser or any sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer, or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to a Fund’s portfolio composition or that has access to information regarding a Fund’s portfolio composition or that has access to information regarding a Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 8.900-E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the applicable Investment

Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.

Description of the Funds⁸

Each Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and the holdings will be consistent with all requirements in the Exemptive Application.⁹

AdvisorShares Q Portfolio Blended Allocation ETF

The Fund is an actively managed ETF that is primarily a “fund of funds.” The Fund’s investment objective is to seek to maximize total return over the long-term. The Fund will invest in ETFs representing all asset classes, including, but not limited to, treasury bonds, municipal bonds, investment grade corporate bonds, high-yield U.S. corporate bonds, U.S. and foreign equities, and commodities.

⁸ The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act. See 17 CFR 240.10A-3.

⁹ Pursuant to the Exemptive Application, the only permissible investments for a Fund are the following that trade on a U.S. exchange contemporaneously with the Funds’ Shares: exchange-traded funds (“ETFs”), exchange-traded notes, exchange-listed common stocks, exchange-traded American Depositary Receipts, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts and exchange-traded futures, as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds, and repurchase agreements).

AdvisorShares Q Dynamic Growth ETF

The Fund is an actively managed ETF that is primarily a “fund of funds.” The Fund seeks to achieve long-term growth. The Fund will invest in ETFs representing all asset classes, including, but not limited to, treasury bonds, municipal bonds, investment grade corporate bonds, high-yield U.S. corporate bonds, U.S. and foreign equities, commodities, and volatility products.

Investment Restrictions

Each Fund’s holdings will be consistent with all requirements described in the Exemptive Application.¹⁰

Each Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, for each Fund, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund’s investment objective.

Creations and Redemptions of Shares

Creations and redemptions of Shares will take place as described in Rule 8.900-E. Specifically, in connection with the creation and redemption of Creation Units¹¹ and Redemption Units,¹² the delivery or receipt of any portfolio securities in-kind will be required to be effected

¹⁰ See id.

¹¹ Rule 8.900-E(c)(6) provides that the term “Creation Unit” means a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

¹² Rule 8.900-E(c)(7) provides that the term “Redemption Unit” means a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

through a separate confidential brokerage account (a “Confidential Account”).¹³ Authorized Participants (“AP”), as defined in the applicable Form N-1A filed with the Commission, will sign an agreement with an AP Representative¹⁴ establishing the Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a Depository Trust Company Participant that has executed an authorized participant agreement (“Participant Agreement”) with the Distributor with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each AP Representative will be given, before the commencement of trading each Business Day (as defined below), the Creation Basket (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units. Shares of

¹³ Rule 8.900-E(c)(4) provides that the term “Confidential Account” means an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

¹⁴ Rule 8.900-E(c)(3) provides that the term “AP Representative” means an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

each Fund will be issued and redeemed in Creation Units and Redemption Units, the size of which will be specified in the Registration Statement. The size of Creation Units and Redemption Units is subject to change. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the net asset value (“NAV”) per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading on the Exchange on each day that the Exchange is open (a “Business Day”). The Funds will sell and redeem Creation Units and Redemption Units only on Business Days.

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Exemptive Application, APs will be required to purchase Creation Units by making an in-kind deposit of a designated portfolio of securities (“Deposit Securities”), and APs redeeming their Shares will receive an in-kind transfer of a designated portfolio of securities (“Redemption Securities”) through the AP Representative in their Confidential Account.¹⁵ On any given Business Day, the names and quantities of the instruments that constitute the Deposit Securities and the names and quantities of the instruments that constitute the Redemption Securities will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the “Creation Basket.”

¹⁵ According to the Registration Statement, the Funds must comply with the federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the 1933 Act.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in each Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each Fund is expected to be determined once each Business Day as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time. In purchasing the necessary securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than 3:00 p.m. E.T. ("Order Cut-Off Time") on the date such order is placed ("Transmittal Date") in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. As with all existing ETFs, if there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the "Balancing Amount").

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable transaction fees.¹⁶ Other than the Balancing Amount, the Fund will substitute cash only under exceptional circumstances and as set forth under the Fund's policies and procedures governing the composition of Creation Baskets.

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP ("AP Redemption Order") in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit no later than the Order Cut-Off Time on the Transmittal Date. A transaction fee may be imposed to offset costs associated with redemption orders.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then the applicable Fund would instruct its custodian to deliver the Redemption Securities to the appropriate Confidential Account. The Authorized Participant would direct the AP Representative on when that day to liquidate those securities. As with the purchase of securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

¹⁶ To the extent that a Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

Net Asset Value

The NAV will be calculated separately for the Shares of each Fund on each Business Day. Each Fund's NAV is determined as of the close of regular trading on the NYSE, normally 4:00 p.m., Eastern Time. The NAV of each Fund is computed by (i) taking the current market value of its total assets, (ii) subtracting any liabilities, and (iii) dividing that amount by the total number of shares owned by shareholders.

Each Fund generally values its portfolio investments at market prices. If market prices are unavailable or a Fund thinks that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board.

More information about the valuation of each Fund's holdings can be found in the SAI.

Information showing the number of days that the market price of each Fund's Shares was greater than the Fund's NAV (i.e., at a premium) or less than the Fund's NAV (i.e., at a discount) for various time periods is available on the Funds' website at www.advisorshares.com.

Availability of Information

The Funds' website, www.advisorshares.com, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, the prior Business Day's NAV,

market price, the bid/ask spreads at the time of calculation of such NAV (the “Bid/Ask Price”),¹⁷ and a calculation of the premium and discount of the market price or Bid/Ask Price against the NAV. The website and information will be publicly available at no charge.

Form N-PORT requires reporting of a Fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a Fund’s SAI, its shareholder reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. Each Fund’s SAI and shareholder reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed onscreen or downloaded from the Commission’s website at www.sec.gov.

Information regarding 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. Information regarding the previous day’s closing price and trading volume information for the Shares 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 (“CTA”) high-speed line. In addition, the Verified Intraday Indicative Value (“VIIV”), as defined in Rule 8.900-E(c)(2),¹⁸ will be widely disseminated by the Reporting

¹⁷ The Bid/Ask Price of a Fund’s Shares is determined using the mid-point between the current national best bid and offer at the time of calculation of such Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Funds or their service providers.

¹⁸ Rule 8.900-E(c)(2) provides that the term “Verified Intraday Indicative Value” is the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

Authority¹⁹ and/or one or more major market data vendors in one second intervals during the Exchange's Core Trading Session.

Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The VIIV will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during the Core Trading Session. The VIIV is based on the current market value of the securities in a Fund's portfolio that day. The methodology for calculating the VIIV will be available on the Funds' website. The VIIV is intended to provide investors and other market participants with a highly correlated per Share value of the underlying portfolio that can be compared to the current market price. Therefore,

¹⁹ Rule 8.900-E(c)(8) provides that the term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), as the official source for calculating and reporting information relating to such series, including, but not limited to, the NAV, the VIIV, or other information relating to the issuance, redemption, or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

under normal circumstances the VIIV would be effectively a near real time approximation of each Fund's NAV, available free of charge from one or more market data vendors, which is computed only once a day.

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 a Fund.²⁰ Trading in Shares of a Fund will be halted if the circuit breaker parameters in Rule 7.12-E have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to Rule 8.900-E(d)(2)(C), which sets forth circumstances under which Shares of a Fund will be halted.

Specifically, Rule 8.900-E(d)(2)(C)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²¹

²⁰ See Rule 7.12-E.

²¹ The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) the intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares, and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would

Rule 8.900-E(d)(2)(C)(ii) provides that, if the Exchange becomes aware that: (i) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the net asset value, or the holdings are available, as required.

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 Exchange in all trading sessions in accordance with Rule 7.34-E(a). As provided in Rule 7.6-E, 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.

The Shares will conform to the initial and continued listing criteria under Rule 8.900-E, as well as all terms in the Exemptive Application. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share of each Fund will be calculated daily and will be made available to all market participants at the same time.

employ a pricing verification agent to continuously compare two intraday indicative values during regular trading hours in order to ensure the accuracy of the VIIV.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. As part of these surveillance procedures and consistent with Rule 8.900-E(b)(3) and 8.900-E(d)(2)(B), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of a Fund. The issuer of the Shares of each Fund will be required to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 5.5-E(m).

FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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 Equity Trading Permit (“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; (2) Rule 9.2-E(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) how information regarding the VIIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Bulletin will reference that the Funds are 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 Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

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 this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Funds would meet each of the rules relating to listing and trading of Managed Portfolio Shares. To the extent that a Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading on the Exchange or commence delisting procedures under Rule 8.900-E(d)(2)(B). Specifically, the Exchange would consider the suspension of trading, and commence delisting proceedings under Rule 8.900-E(d)(2)(B), of a Fund under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund; (b) if the Exchange has halted trading in a Fund because the VIIV is interrupted pursuant to Rule 8.900-E(d)(2)(C)(ii) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in a Fund because the net asset value with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 8.900-E(d)(2)(C)(ii) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in Shares of a Fund pursuant to Rule 8.900-E(d)(2)(C)(i) and such issue persists past the trading day in which it occurred; (e) if a Fund has failed to file any filings required by the Commission or if the Exchange is aware that a Fund is not in compliance with the conditions of any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff

with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 8.900-E are not continuously maintained; (g) if any of the statements of representations regarding (a) the description of the portfolio, (b) limitations on portfolio holdings, or (c) the applicability of Exchange listing rules as specified herein to permit the listing and trading of a Fund, are not continuously maintained; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

As discussed above, the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to a Fund’s portfolio and Creation Basket. In the event that (a) the Adviser or sub-adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, the Adviser will implement and maintain a fire wall with respect to personnel of the broker-dealer or broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser or the Trust who makes decisions pertaining to a Fund’s portfolio composition or that has access to information regarding a Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

In addition, Rule 8.900-E(b)(5) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to non-public information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and

dissemination of material non-public information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information regarding a Fund’s portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 8.900-E is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Funds because it provides meaningful requirements about both the data that will be made publicly available about the Shares, as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection set forth in Rule 8.900-E(b)(5) will act as a safeguard against misuse and improper dissemination of information related to a Fund’s portfolio composition, the Creation Basket, or changes thereto. The requirement that any person or entity implement procedures to prevent the use and dissemination of material non-public information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal “fire wall” requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. Accordingly, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Shares of the Funds and to promote just and equitable principles of trade and to protect investors and the public interest because the Exchange would halt trading under certain circumstances under which trading in the Shares of a Fund may be inadvisable. Specifically, trading in the Shares will be subject to Rule 8.900-E(d)(2)(C)(i), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (a) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.²⁴ Additionally, trading in the Shares will be subject to Rule 8.900-E(d)(2)(C)(ii), which provides that the Exchange would halt trading where the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares). The

²⁴ See supra note 21.

Exchange would halt trading in such Shares until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900-E.²⁵ Each Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application.²⁶ As noted above, FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG, and FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which the Funds plan to invest are generally highly liquid and actively traded and trade at the

²⁵ The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act. See 17 CFR 240.10A-3.

²⁶ See supra note 9.

same time as the Funds and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

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 Exchange will obtain a representation that the NAV per Share of the Funds will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a Fund's SAI, its shareholder reports, its Form N-CSR (filed twice a year), and its Form N-CEN (filed annually). A Fund's SAI and shareholder reports will be available free upon request from the applicable Fund, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout the Core Trading Session by the Reporting Authority and/or one or more major market data vendors. The website for the Funds will include a prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under Rule 8.900-E. Each Fund's investments, including derivatives, will be

consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or -3X) of the Fund's investment objective.

The Exchange also believes that the proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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. The Exchange believes the proposed rule change would permit the listing and trading of additional actively-managed exchange-traded products, thereby promoting competition among exchange-traded products to the benefit of investors and the marketplace.

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 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. Please include File Number SR-NYSEArca-2020-94 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2020-94. 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 Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-94, 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.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(12).