

as required by Rule 19d-1(c)(2) under the Act,<sup>11</sup> which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with CHX rules and all other rules subject to the imposition of fines under the MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the MRP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that CHX will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRP or whether a violation requires formal disciplinary action under CHX Article 12.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>12</sup> and Rule 19d-1(c)(2) under the Act,<sup>13</sup> that the proposed rule change (SR-CHX-2011-07) be, and hereby is, approved and declared effective.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Cathy H. Ahn,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-64693; File No. SR-NYSEAmex-2011-38]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 903G To Permit the Exchange To List Flexible Exchange Options on Index and Equity Securities That Are Eligible for Non-FLEX Options Trading, and That Have Non-FLEX Options on Such Index and Equity Securities Listed and Traded on at Least One National Securities Exchange, Even if the Exchange Does Not List Such Non-FLEX Options

June 16, 2011.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 3, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903G (Terms of FLEX Options) to permit the Exchange to list Flexible Exchange Options ("FLEX Options") on index and equity securities that are eligible for Non-FLEX Options trading, and that have Non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and <http://www.nyse.com>.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange is proposing to amend Rule 903G (Terms of FLEX Options) to permit trading of FLEX Options series in securities whose Non-FLEX Options are listed and traded on a national securities exchange(s), based on a recently adopted rule change of the Chicago Board Options Exchange ("CBOE").<sup>4</sup>

Rule 903G currently permits the Exchange to approve and open for trading FLEX Options only after the particular index or equity security has been approved for Non-FLEX Options trading.

The Exchange proposes to adopt a rule change similar to a rule change recently adopted by the CBOE to allow FLEX Equity Options on any security that meets the standards of NYSE Amex Rule 915, and that has Non-FLEX Options on such security listed and traded on at least one options exchange, regardless of whether the Exchange trades such Non-FLEX Options.

Similarly, the CBOE rule change also adopted a provision to allow FLEX Index Options on any index that meets its listing standards. NYSE Amex proposes to adopt a similar provision that would permit FLEX Index Options on any index that meets the standards of Rule 901C, and that has Non-FLEX Options on such index listed and traded on at least one options exchange, even if the Exchange does not list and trade such Non-FLEX Options.

The Exchange also proposes to designate 903G(c)(1) as "reserved" because the text in that provision stating that FLEX Equity Option transactions are limited to transactions in options on underlying securities that have been approved by the Exchange in accordance with Rule 915 would no longer be applicable.

As an alternative to the over-the-counter marketplace and other national security exchanges, the Exchange proposes to increase the spectrum of indexes and equity securities that are

<sup>4</sup> See Securities Exchange Act Release No. 60585 (August 28, 2009), 74 FR 46257 (September 8, 2009). Unlike CBOE's rule, we have clarified that our proposed rule would only permit the trading of FLEX Options on securities whose Non-Flex Options are listed and traded on at least one options exchange.

<sup>11</sup> 17 CFR 240.19d-1(c)(2).

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 240.19d-1(c)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(44).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

eligible for FLEX Options trading on the Exchange, even if the Exchange does not list Non-FLEX Options on such indexes or equity securities. In this regard, the Exchange does not list options on every NMS stock or index that is eligible for options trading, even if permitted to do so according to its listing standards, but recognizes that market participants may want access to options on such indexes and equity securities, in addition to the certainty and safeguards that a regulated and standardized marketplace provides.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),<sup>5</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>6</sup> in particular, because it is 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 a national market system, and, in general, to protect investors and the public interest. The Exchange believes that its proposal to permit the Exchange to list FLEX Options on indexes and equity securities that are eligible for Non-FLEX Options trading and whose Non-FLEX Options are listed and traded on at least one national securities exchange, even if the Exchange does not list such Non-FLEX Options, would provide market participants with additional means to manage their risk exposures and carry out their investment objectives with listed options. In this regard, the Exchange's proposal would increase competition in the FLEX Options market. In addition, the Exchange's proposal is consistent with investor protection and the public interest in that it is limited to FLEX Options on securities that would be eligible to have, and in fact have, Non-FLEX Options listed and traded on them. The criteria for such underlying securities has been carefully crafted over the years to ensure that only appropriate securities have standardized options listed on them (e.g., securities with sufficient trading volume and shareholders).

### *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 proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the 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 Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>9</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange could immediately list FLEX Options on indexes and equity securities that are eligible for non-FLEX Options trading, and that have non-FLEX Options on such index and equity securities listed and traded on at least one national securities exchange, even if the Exchange does not list non-FLEX Options on such indexes and equity securities. In support of the waiver, the Exchange believes that it would benefit the marketplace and the investing public because it would provide market participants with additional means to manage their risk exposures and carry out their investment objectives with listed options.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. In making this

determination, the Commission notes that NYSE Amex's proposed rule change is substantially similar to CBOE's FLEX rules, which also permit CBOE to list FLEX options on securities that are eligible for non-FLEX options trading, even if CBOE does not list non-FLEX options on such securities.<sup>11</sup> The Commission notes that the CBOE's proposal was subject to full notice and comment, and the Commission received no comments on CBOE's rule proposal. Further, the Commission notes that NYSE Amex's proposal adds clarification to the rules, noting expressly that its rules would only permit the trading of FLEX Options on securities whose non-FLEX Options are listed and traded on at least one national securities exchange. This provision will help to ensure that adequate exchange requirements are met for trading these products and that the FLEX market will provide an alternative to certain investors that want to customize specified options terms not available in the standardized market. In addition to the factors noted above, the Commission also believes that waiver of the operative delay will allow the NYSE Amex to immediately compete with other exchanges for the trading of such FLEX options, thereby providing investors another venue on which to trade these products. For these reasons, the Commission designates, consistent with the protection of investors and the public interest, that the proposed rule change become operative immediately upon filing.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the 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

<sup>11</sup> See *supra* note 4.

<sup>12</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6). Pursuant to Rule 19b-4(f)(6)(iii) under the Act, the Exchange is required to give the Commission 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 Commission notes that the Exchange has satisfied this requirement.

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 17 CFR 240.19b-4(f)(6)(iii).

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

<sup>6</sup> 15 U.S.C. 78f(b)(1).

• Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR-NYSEAmex-2011-38 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 No. SR-NYSEAmex-2011-38. 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, 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 NYSE Amex. 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-NYSEAmex-2011-38 and should be submitted on or before July 13, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Elizabeth M. Murphy,**

*Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-64690; File No. SR-NYSEArca-2011-17]

### **Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Madrona Forward Domestic ETF, Madrona Forward International ETF, and Madrona Forward Global Bond ETF**

June 16, 2011.

#### **I. Introduction**

On April 13, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the Madrona Forward Domestic ETF, Madrona Forward International ETF, and Madrona Forward Global Bond ETF (each a "Fund," and, together, the "Funds") under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on May 2, 2011.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of 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. The Shares will be offered by the AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The investment advisor for the Funds is AdvisorShares Investments, LLC ("Adviser"). Madrona Funds LLC is the Funds' sub-adviser ("Sub-Adviser") and provides day-to-day portfolio management of the Funds. Foreside Fund Services, LLC ("Distributor") is the principal underwriter and distributor of the

Funds' Shares. The Bank of New York Mellon Corporation ("Administrator") serves as administrator, custodian, and transfer agent for the Funds. The Exchange states that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.<sup>5</sup>

With respect to each of the Funds, the Sub-Adviser will employ a forward-looking fundamental investment process when making capital allocation decisions across investment strategies for the Funds. The underlying investment process for the Madrona Forward Domestic ETF and the Madrona Forward International ETF is based on a measure of forecasted earnings and projected growth relative to the price of the equities. The underlying investment process for the Madrona Forward Global Bond ETF is based on fundamental yield curve analysis and a measure of mean reversion for future expected yield curve trajectory. Each Fund will utilize a core investment allocation strategy seeking to replace what the Sub-Adviser's investment committee deems inefficient index methodologies for core investing that are prevalent in the marketplace. The Funds will invest in actively managed, broadly diversified portfolios and differ from most traditional indices in that the proportion, or weighting, of the securities in the Funds are based on forward-looking fundamental analysis rather than only on market capitalization of such securities. Risk management guidelines will be employed to protect against dramatic over- or under-weighting of individual securities, reducing company specific risks.

#### *Madrona Forward Domestic ETF*

The investment objective of this Fund is to seek long-term capital appreciation above the capital appreciation of its benchmark, the S&P 500 Index. The Sub-Adviser will seek to achieve the Fund's investment objective primarily by selecting a portfolio of up to 500 of the largest U.S. exchange-traded equity securities.<sup>6</sup> The Sub-Adviser will select the securities for the Fund's portfolio

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

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

<sup>3</sup> See Securities Exchange Act Release No. 64342 (April 26, 2011), 76 FR 24548 ("Notice").

<sup>4</sup> The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On November 30, 2010, the Trust filed with the Commission Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Funds (File Nos. 333-157876 and 811-22110) ("Registration Statement"). The Trust has also 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 (File No. 812-13677), dated May 6, 2010 ("Exemptive Application").

<sup>5</sup> See Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, such adviser and/or sub-adviser will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

<sup>6</sup> The Fund may hold only equity securities traded in the U.S. on registered exchanges and will hold a minimum of 13 equity components.

<sup>13</sup> 17 CFR 200.30-3(a)(12).