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

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68403; File No. SR-OCC-2012-23]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate Certain Physically-Settled Options on U.S. Treasury Securities

December 11, 2012.

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 November 30, 2012, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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

OCC proposes to accommodate certain physical-settled options on the U.S. Treasury securities.

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

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>3</sup>

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

The purpose of this proposed rule change is to accommodate the clearing of physically-settled options on certain U.S. Treasury notes and U.S. Treasury bonds ("Treasury Options") proposed to be traded by NASDAQ OMX PHLX, LLC ("PHLX"). OCC's current By-Laws and Rules (collectively, the "Rules") accommodate options on Treasury securities, but the options on Treasury securities contemplated by the Rules are no longer traded and are different from the Treasury Options that PHLX intends to trade in certain respects. Accordingly, OCC proposes to amend the Rules, as described below, to accommodate such Treasury Options as well as to streamline Chapter XIV of its rulebook by re-numbering certain rules and deleting unused and "reserved" rules.

The PHLX Treasury Options are limited to European-style options on Treasury notes and bonds with a unit of trading of \$10,000. OCC therefore proposes to remove provisions and references within Chapter XIV of the Rules to American-style options on Treasury securities, Treasury bills as an eligible underlying interest for options on Treasury securities, and "mini options" on Treasury securities. In addition, OCC proposes to remove from the Rules the defined term "adjusted exercise price," which related only to options on Treasury bills and consequently is no longer needed, and update other definitions within the Rules to reflect the limiting of the underlying interests for Treasury Options to Treasury bonds and notes. Furthermore, OCC does not plan to permit escrow deposits to be made in connection with the clearing of Treasury Options and proposes to remove related provisions in Section 2 of Article XIII.

OCC generally will apply current expiration date exercise procedures to Treasury Options, and will require delivery settlement for exercised and assigned Treasury Options to be effected on a broker-to-broker basis through the Fixed Income Clearing Corporation ("FICC"). Clearing members interested in Treasury Options have advised that it would be operationally more efficient for them if delivery settlement were effected in this manner. As not all OCC clearing members are participants of the Government Securities Division ("GSD") of FICC, the proposed rules would permit clearing members to designate, with proper advance notice to OCC, a representative that is a GSD participant who would be responsible for inputting trade information into FICC's systems for delivery settlement purposes. The proposed rules make it clear, however, OCC would have no obligation to such designated representative and contain the agreement of the designating clearing member to be bound by, and to hold OCC harmless against any claims based on, the designated representative's actions or delays in acting or failures to act.

On the expiration date for a Treasury Option, OCC will produce an exercise and assignment report identifying the delivering and receiving clearing members and other relevant delivery information. Clearing members that are obligated to purchase or sell Treasury securities as a result of the exercise or assignment of positions in Treasury Options will be required to submit the terms of such trades to FICC's real time trade matching system. If the trade information submitted by the delivering and receiving clearing member matches within FICC's system, FICC becomes obligated to guarantee settlement of the trade pursuant to FICC's rules, at the point in time at which FICC makes available to the delivering and receiving clearing members a report indicating the trade has been compared and OCC's obligation to guarantee delivery settlement will be terminated. Delivery settlement through FICC includes delivery of the underlying securities against payment of the aggregate purchase price increased by the amount of accrued interest. If a trade does not match, the delivering and receiving OCC clearing members will be required to notify OCC within such time as OCC may specify of such failure on the first business day after the expiration date. If no such notification is made within the deadline, pursuant to proposed Rule 1403(d), OCC's obligation to guarantee settlement will be extinguished as of

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

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

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

<sup>3</sup> The Commission has modified the text of the summaries prepared by OCC.

such deadline, regardless of whether or not settlement was actually completed.

In the event OCC is given timely notification of a failure to match on the first business day after the expiration date, the clearing members would be required to attempt to resolve the failure such that settlement could occur through FICC by a deadline specified by OCC on the second business day following the expiration date. If the failure is not resolved and the trade has not matched by the deadline on the second business day after the expiration date, the delivering and receiving OCC clearing members will be required to notify OCC within such time as OCC may specify of such failure. If no such notification is made within the deadline, pursuant to proposed Rule 1404(a), OCC's obligation to guarantee settlement will be extinguished as of such deadline, regardless of whether or not settlement was actually completed.

If OCC receives timely notification, pursuant to proposed Rule 1404(a), that the second submission attempt at FICC failed to result in a match, OCC will assess and pay damages, if any, incurred by the Delivering or Receiving Clearing Member, as applicable, in connection with the failure to match. OCC will also be authorized to debit the amount of such damages from the account of the Delivering or Receiving Clearing Members, as applicable.

Under proposed Rule 1404, in the event the non-defaulting clearing member buys or sells the underlying Treasury security, the non-defaulting clearing member will be required to promptly notify OCC of the price paid or received, as applicable, and OCC will take this information into account in assessing damages. However, OCC will not be bound to accept these prices in assessing damages, and will be able to make an independent determination of damages. Proposed Rule 1404 provides that OCC's determination of damages would be at OCC's sole discretion, final and binding on all parties. Such "failure to match" procedures will limit OCC's liability in the event of a default by one of its clearing members. Proposed Rules 1401, 1402, 1403 and 1404 reflect the settlement process described above.

OCC will collect and hold margin from clearing members with Treasury Option delivery or receipt obligations until the exercise settlement date, unless OCC receives notification of a failure to match, in which case OCC will continue to hold margin until either the trade is deemed settled or damages have been assessed and paid to the non-defaulting clearing member.

Proposed Rule 1405 would clarify that OCC may pursue disciplinary action

against clearing members who fail to discharge the delivery, payment, and notification obligations as set forth in proposed Rules 1403 and 1404.

In addition to the above changes relating to the terms of and settlement process for Treasury Options, OCC proposes revisions to Section 5 of Article XIII of the By-Laws regarding the handling of shortages of Treasury Securities. These revisions would provide OCC with broader discretion in determining whether a shortage exists and simplify the procedures to be used in this situation.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the "Act"), because they are designed to promote the prompt and accurate clearance and settlement of securities transactions and the protection of investors and the public interest. They accomplish this purpose by, among other things, updating OCC's existing rule provisions to accommodate Treasury Options, as proposed for trading by PHLX, and implementing a settlement process designed to minimize the risks of settlement failures for investors. In addition, the proposed changes facilitate the establishment of linked and coordinated facilities for clearance and settlement of transactions in securities options by utilizing the existing infrastructure of two clearing agencies to create an operationally efficient exercise settlement process for Treasury Options, proposed for trading by PHLX. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

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

OCC does not believe the proposed rule change would impose any burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its

reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commissions Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-OCC-2012-23 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-OCC-2012-23. This file number should be included on the subject line if email 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 Section, 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 such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/components/docs/legal/rules\\_and\\_bylaws/sr\\_occ\\_12\\_23.pdf](http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_23.pdf).

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For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>4</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-68408; File No. SR-NYSEArca-2012-117]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Pring Turner Business Cycle ETF Under NYSE Arca Equities Rule 8.600

December 11, 2012.

On October 17, 2012, 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 Pring Turner Business Cycle ETF ("Fund"). The proposed rule change was published for comment in the **Federal Register** on October 31, 2012.<sup>3</sup> The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

#### I. Description of the Proposal

The Exchange proposes to list and trade Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.

The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The

investment adviser to the Fund is AdvisorShares Investments, LLC ("Adviser"). Pring Turner Capital Group ("Sub-Adviser") is the Fund's sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund. The Exchange states that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.<sup>5</sup>

**Investment Objective.** The Fund's investment objective is to seek long-term total return from capital appreciation and income. The overriding investment goal of the Fund is to protect the value of the Fund's portfolio during unfavorable market conditions and to grow the value of the Fund's portfolio in favorable market conditions. Utilizing its proprietary business cycle research, the Sub-Adviser proactively will change the Fund's asset allocation and sector emphasis in seeking to minimize the Fund's portfolio risk and to optimize portfolio returns throughout the business cycle.

**Fund Holdings.** The Sub-Adviser will invest the Fund's portfolio in securities that provide diversified exposure to the three primary asset classes (*i.e.*, stocks, bonds and commodities) across a wide range of economic sectors. In seeking its objective, the Fund may invest in U.S. and foreign equity securities; debt securities; exchange-traded products ("Underlying ETPs");<sup>6</sup> and cash and

cash equivalents, as described below. The Fund may invest in equity securities of any capitalization range and in any market sector at any time as necessary to seek to achieve the Fund's investment objective.

According to the Registration Statement, the equity securities in which the Fund may invest include common and preferred stock, Master Limited Partnerships, rights, U.S.-listed REITs, and depositary receipts, including American Depositary Receipts ("ADRs"), as well as Global Depositary Receipts ("GDRs"), which are certificates evidencing ownership of shares of a foreign issuer. Depositary receipts may be sponsored or unsponsored.<sup>7</sup> The Fund may invest in issuers located outside the United States, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include ADRs, GDRs, European Depositary Receipts, International Depositary Receipts, "ordinary shares," and "New York shares" issued and traded in the United States. The U.S. equity securities in which the Fund will invest will be listed on a national securities exchange, except that the Fund may invest up to 10% of total assets in ADRs that are not listed on any national securities exchange and that are traded over-the-counter. The Fund also may invest in equity securities of foreign issuers; the foreign equity securities, including any depositary receipts, in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group ("ISG"), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.

From time to time, the Sub-Adviser may invest a portion of the Fund's portfolio in unleveraged inverse ETFs to

811-22110) ("Registration Statement"). The Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code. The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812-13677) ("Exemptive Order").

<sup>5</sup> The Exchange represents that in the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it 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. See Notice, *supra* note 3, 77 FR at 65921.

<sup>6</sup> Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500);

Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of Underlying ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Underlying ETPs in which the Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Fund may invest in inverse Underlying ETPs, the Fund will not invest in leveraged (*e.g.*, 2X, -2X, 3X or -3X) Underlying ETPs.

<sup>7</sup> The Fund generally will invest in sponsored ADRs but it may invest up to 10% of total assets in unsponsored ADRs.

<sup>4</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> Securities Exchange Act Release No. 68108 (October 25, 2012), 77 FR 65920 ("Notice").

<sup>4</sup> The Trust is registered under the 1940 Act. On October 12, 2012, 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), and under the 1940 Act relating to the Fund (File Nos. 333-157876 and