



DIVISION OF  
TRADING AND MARKETS

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

October 20, 2010

W. John McGuire  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Mr. McGuire:

In your letter dated October 20, 2010, as supplemented by conversations with the staff of the Division of Trading and Markets ("Division"), AdvisorShares Trust (the "Trust") on behalf of itself, the Cambria Global Tactical ETF (the "Fund"), any national securities exchange or national securities association on or through which the shares issued by the Fund ("Shares") may subsequently trade, and persons or entities engaging in transactions in Shares, requests exemptions from, or interpretive or no-action advice regarding Section 11(d)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, in connection with secondary market transactions in Shares and the creation or redemption of Creation Units as discussed in your letter.

We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined in your letter, unless we note otherwise.

***Response:***

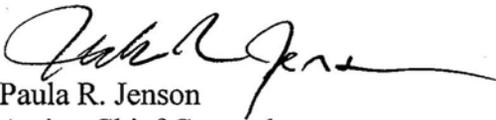
Based on the facts and representations set forth in your letter, and without necessarily agreeing with your analysis, the Division will not recommend enforcement action to the Commission if a broker-dealer treats shares of the Fund, for purposes of the relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 provided in the Letter re: Derivative Products Committee of the Securities Industry Association (November 21, 2005) ("Class Relief Letter"), as shares of a Qualifying ETF (as defined in the Class Relief Letter). In granting this relief, we note in particular your representations that at least 90% of the Fund's portfolio holdings are, and will be, shares of Prior ETFs, that each of the Prior ETFs held by the Fund will have either met all conditions set forth in the Class Relief Letter, will have individual relief from the Commission, or will be able to rely on individual relief even though they are not named parties, and that in no case will the Fund hold securities (other than ETFs or government securities as defined in Section 3(a)(42)(A), (B), or (C) of the Exchange Act) issued by a single issuer in excess of 20% of the Fund's portfolio holdings. Accordingly,

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with respect to shares of the Fund, to the extent that a broker-dealer satisfies the other conditions in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

The foregoing no-action positions taken under Section 11(d)(1) of the Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, are based solely on your representations and the facts presented to the Division, and are strictly limited to the application of those to transactions involving the shares of the Fund under the circumstances described above and in your letters.

Sincerely,



Paula R. Jenson  
Acting Chief Counsel

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October 20, 2010

Paula Jenson, Esq.  
Division of Trading and Markets  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549

**Re: Request of AdvisorShares Trust for Exemptive, Interpretive or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder**

Dear Ms. Jenson:

AdvisorShares Trust (the "Trust") is an open-end management investment company organized on July 30, 2007 as a Delaware statutory trust. The Trust is currently comprised of eight series, the Cambria Global Tactical ETF (the "Fund"), Emerald Rock Low Priced Focused Growth ETF, Emerald Rock Dividend Growth ETF, Mars Hill Global Relative Value ETF ("Mars Hill ETF"), Peritus High Yield ETF, WCM/BNY Mellon Focused Growth ADR ETF, the Active Bear ETF and Dent Tactical ETF ("Original Fund").

#### **Summary of Previously Granted Relief**

In September 2009, the Trust listed the individual shares of a portfolio of the Trust, the Original Fund, on the NYSE Arca, Inc. ("NYSE Arca"). Prior to such time, the Trust requested

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relief<sup>1</sup> on behalf of itself, the Original Fund, any national securities exchange or national securities association on or through which the exchange-traded shares of the Trust (“Dent ETF Shares”) would subsequently trade, and persons or entities engaging in transactions in Dent ETF Shares, from the staff of the Division of Trading and Markets (“Staff”) with respect to Rule 10b-17 and Rules 101 and 102 of Regulation M in connection with secondary market transactions in Shares and the creation or redemption of Creation Units, as defined below. The Staff granted such relief (“Existing Relief”) in the letter addressed to John McGuire, dated September 14, 2009. Subsequently, the Trust received similar relief in connection with the Mars Hill ETF.<sup>2</sup>

The Trust on behalf of itself, the Fund, and any national securities exchange or national securities association on or through which the shares subsequently trade (each such market being an “Exchange”), and persons or entities engaging in transactions in shares issued by the Fund (“Shares”), as applicable, requests that the Securities and Exchange Commission (the “Commission” or the “SEC”) grant exemptive, interpretive or no-action relief from Section 11(d)(1) of the Exchange Act and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder, in connection with secondary market transactions in Shares and the creation and redemption of Creation Units, as discussed below.

The Trust will issue and redeem Shares of the Fund in aggregations of 25,000 Shares, with a minimum market value of \$1,250,000. The Trust has filed a registration statement on Form N-1A and will have the Shares listed on the NYSE Arca. The Fund will be a fund of

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<sup>1</sup> See, the request letter from W. John McGuire dated September 14, 2009 with respect to the Trust.

<sup>2</sup> Letter from Josephine J. Tao, Assistant Director, Division of Trading and Markets, to W. John McGuire dated July 2, 2010 (the “Mars Hill Letter”). This letter also provided relief for the Mars Hill ETF and the Original Fund from Section 11(d)(1) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder.

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exchange traded funds (“ETFs”) and intends to invest at least 90% of its portfolio<sup>3</sup> in shares of other ETFs (“Underlying ETFs”) and certain other exchange-traded products, including, but not limited to, exchange-traded notes, exchange-traded currency trusts and exchange-traded commodities pools. The Underlying ETFs will be organized in the United States, registered under the 1940 Act and listed on an Exchange. The other exchange-traded products in which the Fund invests will issue equity securities and be listed on an Exchange. In addition, all Underlying ETFs will either meet all conditions set forth in the Equity ETF Class Relief Letter<sup>4</sup> and the SIA Letter<sup>5</sup>, or the ETV Class Relief Letter<sup>6</sup>, respectively, or will have received individual relief from the Commission, or will be able to rely on individual relief even though they are not named parties (“Prior ETFs”). Other than Underlying ETFs, no single holding will represent more than 20% of the assets of the Fund, except in a period when the Fund adopts a temporary defensive position, during which the Fund may invest more than 10% of its assets in the securities of a single issuer provided the securities are government securities as defined in Section 3(a)(42)(A), (B), or (C) of the Exchange Act.

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<sup>3</sup> The remainder of the portfolio will include short-term U.S. Government securities, short-term debt securities and money market instruments including shares of other mutual funds, commercial paper, certificates of deposit, bankers’ acceptances and repurchase agreements.

<sup>4</sup> Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Clifford Chance US LLP, dated October 24, 2006.

<sup>5</sup> Letter from Catherine McGuire, Esq., Chief Counsel, Division of Market Regulation, to the Securities Industry Association Derivative Products Committee, dated November 21, 2005 (the “SIA Letter”).

<sup>6</sup> Letter from Racquel L. Russell, Branch Chief, Office of Trading Practices and Processes, Division of Market Regulation, to George T. Simon, Esq., Foley & Lardner LLP, dated June 21, 2006.

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### **The Fund and its Investment Objective**

AdvisorShares Investments, LLC (the "Manager") will serve as the investment adviser to the Fund. The Fund is sub-advised by Cambria Investment Management, Inc. ("Cambria" or "Sub-Advisor"). Cambria, in consultation with the Manager, handles day-to-day portfolio management of the Fund's assets and is primarily responsible for selecting portfolio securities for the Fund. Cambria seeks to achieve the Fund's investment objective by investing primarily in other exchange-traded funds, that offer diversified exposure, including inverse exposure to; global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and exchange-traded products including, but not limited to; exchange-traded notes, exchange-traded currency trusts and exchange-traded closed-end funds.

### **Precedents**

The SEC staff ("Staff") has previously issued the relief requested herein to other actively-managed ETFs.<sup>7</sup> The Mars Hill Letter provided relief specific to the funds described therein and, therefore, the Trust and the Fund are not entitled to rely on the Mars Hill Letter for relief. The Trust and Fund note, however, that their proposal—the creation and issuance by an actively-managed investment company of shares that individually trade on an Exchange, but that can only be purchased from and redeemed with the issuing investment company in large

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<sup>7</sup> See Letter from Josephine Tao to Wisdom Tree Trust, dated May 9, 2008 (the "Wisdom Tree Letter") and the Mars Hill Letter. The Fund's Board of Trustees has authorized a Distribution and Service Plan ("Plan") pursuant to Rule 12b-1 under the 1940 Act, but no such fee is currently being paid by the Fund and the Board has not approved any payments for the current fiscal year. We understand that the exemptive and no-action relief under Section 11(d)(1) would not be available to any broker-dealer that received 12b-1 fees under the Plan. See SIA Letter.

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aggregations—is no longer novel. The Commission has in the past sixteen years considered and approved many similar proposals. Some of the index-based products for which relief has been granted have been trading publicly for years, and the Trust is not aware of any abuses associated with them. Indeed, several of the index-based products have been so embraced by investors that they are routinely among the highest volume securities on the exchanges on which they trade.

The SIA Letter identifies certain ETFs as “Qualifying ETFs.” Qualifying ETFs must meet the following three conditions:

1. The ETF shares are issued by an open-end investment company or unit investment trust registered with the Commission under the Investment Company Act;
2. The ETF shares are listed and trade on a market that has obtained approval from the Commission pursuant to Section 19(b) of the Exchange Act of a rule change regarding the listing and trading of the ETF shares on the market (or that is relying on Rule 19b-4(e) to list and trade the ETF shares); and
3. The ETF (a) consists of a basket of twenty or more Component Securities, with no one Component Security constituting more than 25% of the total value of the ETF, and is managed to track a particular index all of the components of which are publicly available; or (b) solely for purposes of the exemptive relief for Broker-Dealer APs from Section 11(d)(1) of the Exchange Act, is an ETF with respect to which the staff of the Division of Market Regulation (“Staff”) has granted Non-AP Broker-Dealers (as defined below) relief from the requirements of Section 11(e)(1) in a letter dated prior to the date of this letter, provided that

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the ETF has not changed in such a way as to materially affect any of the facts or representations in such prior letter.

The Fund will meet the first two conditions and Condition 3(b) is unavailable. While the Fund cannot meet condition 3(a) because it is not an index ETF and because it may not hold twenty or more securities at all times, each Underlying ETF in which the Fund invests will have received individual exemptive relief from the provisions covered by the SIA letter or will be able to rely on the SIA Letter.

**Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder**

Rule 10b-10

Rule 10b-10 requires a broker or dealer effecting a transaction in a security for a customer to give or send written notification to such customer disclosing the information specified in paragraph (a) of Rule 10b-10, including the identity, price and number of shares or units (or principal amount) of the security purchased or sold. The Trust requests that the Commission grant an exemption from Rule 10b-10, as discussed below, with respect to the creation (*i.e.*, issuance) or redemption of Creation Units. The Trust is not requesting exemptive or interpretive relief from Rule 10b-10 in connection with purchases and sales of shares of the Fund in the secondary market.

The Trust proposes that broker-dealers acting for their customers in either purchasing or redeeming Creation Units of the Fund be permitted to provide such customers with a statement of the number of Creation Units created or redeemed without providing a statement of the

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identity, number and price of shares of the securities which must be tendered in return for a Creation Unit or will be received when a Creation Unit is redeemed (the “Creation List” and “Redemption List,” respectively). The Creation Lists and the Redemption Lists for the Fund will be made available by the Fund’s custodian or the Manager, through the National Securities Clearing Corporation, immediately prior to the opening of business on the Exchange on each Business Day. We anticipate that any institution or broker-dealer engaging in creation or redemption transactions would have done so only with knowledge of the composition of the applicable securities, so that specific information in the Rule 10b-10 notification would be redundant.

The Trust agrees that any exemptive relief under Rule 10b-10 with respect to creations and redemptions will be subject to the following conditions:

- (1) Confirmation statements of creation and redemption transactions for the Fund will contain all of the information specified in paragraph (a) of Rule 10b-10 other than identity, price, and number of shares of each individual securities constituent of the Creation List or the Redemption List tendered or received by the customer in the transaction;
- (2) Any confirmation statement of a creation or redemption transaction for the Fund that omits the identity, price, or number of shares of each individual securities constituent of the Creation List or the Redemption List tendered or received by the customer in

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the transaction will contain a statement that such omitted information will be provided to the customer upon request; and

- (3) All such requests will be fulfilled in a timely manner in accordance with paragraph (c) of Rule 10b-10.

Section 11(d)(1); Rule 11d1-2

Section 11(d)(1) of the Exchange Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. Rule 11d1-2 provides an exemption from Section 11(d)(1) for securities issued by a registered open-end investment company or unit investment trust with respect to transactions by a broker-dealer who extends credit on such security, provided the person to whom credit has been extended has owned the security for more than thirty days.<sup>8</sup>

The Trust hereby requests that the Staff, consistent with and subject to the same conditions as the Wisdom Tree Letter, provide relief under Section 11(d)(1) and Rule 11d1-2. The Trust believes that application of the thirty-day restriction in Rule 11d1-2 to broker-dealers engaging exclusively in secondary market transactions in Shares does not further the purposes of

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<sup>8</sup> Applicants note that broker-dealers that engage in both creation of Creation Units of shares of the Fund and secondary market transactions in such shares and that meet the requirements of Rule 11d1-1 may be covered by the exemptions provided in such rule.

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Section 11(d)(1) or Rule 11d1-2. The only compensation a broker-dealer will receive for representing a customer in purchasing Shares is the commission or asset-based brokerage account fee charged to that customer, which in all likelihood is the same compensation the broker-dealer would receive in connection with any stock purchase by a customer. There is no special financial incentive to a broker-dealer, other than the broker-dealer's regular commission, to engage in secondary market transactions in Shares, either as principal or agent.

Rule 15c1-5 and 15c1-6

Rule 15c1-5 requires a broker or dealer controlled by, controlling, or under common control with, the issuer of a security who induces the purchase or sale by a customer of a security, to disclose the existence of such control before entering into a contract with or for such customer for the purchase or sale of such security. Rule 15c1-6 requires a broker or dealer to send a customer written notification of its participation in the primary or secondary distribution of any security in which it effects any transaction in or for such customer's account or induces the purchase or sale of such security by such customer.

The Trust believes that disclosure by a broker-dealer of a control relationship with the issuer of a security held in the Fund's portfolio (a "Portfolio Security") or of a participation in the distribution of a Portfolio Security would impose an unnecessary and unjustifiable burden on broker-dealers engaging in transactions in shares of the Fund for their customers. There is no realistic potential for manipulating the market price of a Portfolio Security by transactions in Shares. Application of the rules could adversely affect the attractiveness of Shares and to broker-

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dealers and thereby affect market liquidity of the Fund. The Trust, therefore, requests that the Staff grant no-action relief from application of the rules with respect to creations and redemptions of Shares and secondary market transactions therein.

**Conclusion**

Based on the foregoing, we respectfully request that the Commission and the Staff grant the relief requested herein. The forms of relief requested are substantially similar to those actions that the Commission and the Staff have taken in similar circumstances, most notably in the Wisdom Tree and Mars Hill Letters. If you have any questions please call me at (202) 739-5654 or my colleague Michael Berenson at (202) 739-5450.

Sincerely,



W. John McGuire

cc: Darren Vieira, Esq.  
Michael Berenson, Esq.