



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

December 16, 2011

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

Re: AdvisorShares Trust
File No. TP 11-24

Dear Mr. McGuire:

In your letter dated December 16, 2011, as supplemented by conversations with the staff of the Division of Trading and Markets ("Staff"), you request on behalf of the AdvisorShares Trust (the "Trust") and the Meidell Tactical Advantage ETF, Madrona Global Bond ETF, Madrona Domestic ETF, Madrona International ETF, and TrimTabs Float Shrink ETF (collectively the "Funds") relief from Rule 10b-17 under the Securities Exchange Act of 1934, as amended ("Exchange Act"). We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as in your letter, unless we note otherwise.

Response:

Rule 10b-17, with certain exceptions, requires an issuer of a class of publicly traded securities to give notice of certain specified actions (for example, a dividend distribution) relating to such class of securities in accordance with Rule 10b-17(b). On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the concerns that the Commission raised in adopting Rule 10b-17 generally will not be implicated if exemptive relief is granted to the Trust because market participants will receive timely notification of the existence and timing of a pending distribution, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.*

This exemptive relief is subject to the following conditions:

- The Trust will comply with Rule 10b-17 except for Rule 10b-17(b)(1)(v)(a) and (b); and
- The Trust will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but

* We also note that timely compliance with Rule 10b-17(b)(1)(v)(a) and (b) would be impractical in light of the nature of the Trust. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date.

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in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

This exemptive relief is subject to modification or revocation at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on this exemption are directed to the anti-fraud and anti-manipulation provisions of the federal securities laws, particularly Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Responsibility for compliance with these and any other applicable provisions of the federal securities laws must rest with the persons relying on this exemptive position. The Division expresses no view with respect to any other question that the proposed transactions may raise, including, but not limited to the adequacy of the disclosure concerning, and the applicability of other federal or state laws to, the proposed transactions.

For the Commission,
by the Division of Trading and Markets,
pursuant to delegated authority,



Josephine J. Tao
Assistant Director

Attachment

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C O U N S E L O R S A T L A W

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December 16, 2011

Josephine J. Tao, Esq.
Assistant Director
Office of Trading Practices and Processing
Division of Trading and Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Request for Exemptive, Interpretive or No-Action Relief from Rule 10b-17 under the Securities Exchange Act of 1934, for Actively-Managed, Exchange-Traded Funds

Dear Ms. Tao:

AdvisorShares Trust (the "Trust") is an open-end management investment company organized on July 30, 2007 as a Delaware statutory trust and is registered with the Securities and Exchange Commission (the "Commission" or the "SEC") as an open-end management investment company under the Investment Company Act of 1940, as amended (the "1940 Act"). The Trust is currently comprised of sixteen series, including, among others, the Meidell Tactical Advantage ETF ("Meidell"), Madrona Global Bond ETF ("Madrona Bond"), Madrona Domestic ETF ("Madrona Domestic"), Madrona International ETF ("Madrona International") and TrimTabs Float Shrink ETF ("TrimTabs" and, collectively with Meidell, Madrona Bond, Madrona International and Madrona Domestic, the "Funds" or, individually, a "Fund"). The Trust, on behalf of itself and the Funds, hereby requests that the Commission grant exemptive,

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interpretive or no-action relief from Rule 10b-17 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").¹

The Trust issues and redeems shares of the Funds ("Shares") in aggregations of at least 25,000 Shares ("Creation Unit Aggregations"), with a minimum market value of \$500,000. The Trust is overseen by a board of trustees (the "Board") that will maintain the composition requirements of Section 10 of the 1940 Act. The Funds have adopted fundamental policies consistent with the 1940 Act and are classified as "diversified" under the 1940 Act. The Funds intend to maintain the required level of diversification, and otherwise conduct its operations, so as to meet the regulated investment company diversification requirements of the Internal Revenue Code of 1986, as amended.

The Staff has previously issued relief identical to that requested herein to other actively-managed ETFs.² The WisdomTree Letter provided relief specific to funds described therein and, therefore, the Trust and the Funds are not entitled to rely on that letter for relief. The Trust and the Funds 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 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

¹ With respect to other relief from the Exchange Act generally sought by exchange-traded funds, e.g., Regulation M and Section 11(d)(1), the Funds are relying on relief they have obtained individually and/or class relief available to them.

² Letter from Josephine Tao, Assistant Director, Division of Market Regulation, Jack P. Drogin, Esq. Schiff Hardin LLP re WisdomTree Global Real Return Fund (Aug. 29, 2011) (the "WisdomTree Letter").

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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.

Rule 10b-17

Rule 10b-17 (the “Rule”) requires an issuer of a class of publicly-traded securities to give notice of certain specified actions (e.g., dividends, stock splits, rights offerings) relating to such class of securities in accordance with Rule 10b-17(b). Specifically, Rule 10b-17(b)(1)(v)(a-b) require such advance notice to specify (a) for cash distributions, the amount of cash to be paid or distributed per share³, and (b) for in-kind distributions, the amount of the security outstanding immediately prior to and immediately following the dividend or distribution and the rate of such dividend or distribution. Paragraph (c) of the Rule, however, states that the Rule shall not apply to redeemable securities issued by open-end investment companies and unit investment trusts registered under the 1940 Act. Except for the fact that redemption is subject to the minimum condition of tendering a Creation Unit Aggregation of Shares, the Trust is intended to function like any other open-end fund continuously offering its shares. It is in recognition of the foregoing that the Division of Investment Management issued an order permitting the Trust to issue shares with limited redeemability while still treating the Trust like any other open-end investment company.

³ The Rule permits a reasonable approximation of the per share distribution to be provided if exact amounts cannot be given because of existing conversion rights which may be exercised during the notice period and may affect the per share cash distribution, as long as the actual per share distribution is subsequently provided on the record date.

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In addition, compliance with Rule 10b-17(b)(1)(v)(a-b) would be impractical in light of the nature of the Funds. This is because it is not possible for the Trust to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Because of this inability to project the amount of any dividend ten days in advance of a record date, applying the timing requirements of 10b-17(b)(1)(v)(a-b) to the Trust would increase the chances that the Trust would mis-estimate the amount of any such dividend.⁴

The Trust represents that it will comply with the other requirements of the Rule. The Trust further represents that, it will provide the information required by Rule 10b-17(b)(1)(v)(a) and (b) to the Exchange as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time when the Exchange last accepts information relating to distributions on the day before the ex-dividend date.

In the proposing release for Rule 10b-17 (the "Proposing Release")⁵, the Commission stated:

⁴ As an investment company, the Trust is required by the Internal Revenue Code to distribute at least 98% of its ordinary income and capital gains during the calendar year. If the Trust declares too small a dividend, it will be charged an excise tax. If it declares too large a dividend, the excess could be considered a return of capital to investors. To avoid an over-or under-distribution of ordinary income, registered investment companies, including the Trust, must estimate: (i) the amount of ordinary income to be earned during the period from the date the dividend is declared to December 31; and (ii) the number of shares that will be outstanding as of the record date. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date would increase the period for estimating ordinary income and the number of outstanding shares, and thus increase the risk of an over-or under-distribution. Requiring the Trust to declare the amount of a dividend ten days in advance of the record date also would increase the chance that the Trust would over-or under-distribute capital gains. Further, unlike ordinary income, the Trust does not have the problem of estimating the aggregate amount of capital gains it will earn between declaration date and year-end, but as noted above, requiring the Trust to declare the amount of a dividend ten days in advance of the record date would increase the chance that the Trust would misestimate the number of outstanding shares. This, in turn, would increase the chance that the Trust would mis-estimate the per share amount of capital gains it must distribute.

⁵ Exchange Act Release No. 9076 (February 17, 1971).

It has been the experience of the Commission and the securities industry that the failure of a publicly held company to provide a timely announcement of the record date with respect to these types of rights has had a misleading and deceptive effect on both the broker-dealer community and the investing public. As a direct result of such failure, purchasers and their brokers may have entered into and settled securities transactions without knowledge of the accrual of such rights and were thus unable to take necessary steps to protect their interests. Further, sellers who have received the benefits of such rights as recordholders on the specified record date after having disposed of their securities, have also disposed of the cash or stock dividends or other rights received as such recordholders without knowledge of possible claims of purchasers of the underlying security to those rights....In many instances, innocent buyers and sellers have suffered losses. In addition, some issuers have made belated declarations of stock splits or dividends with the apparent knowledge that this action would have a manipulative effect on the market for their securities.

We respectfully submit that none of these concerns raised by the Commission in the Proposing Release⁶ will be implicated if the requested relief is granted. As set forth above, the Trust will comply with the requirements of the Rule except for the timing requirements for notification of the actual amounts of the distributions under Rule 10b-17(b)(1)(v)(a-b). Accordingly, market participants will receive timely notification of the existence and timing of a pending distribution, and will be able to plan their transactions in Fund shares accordingly. As a result, there should be no confusion or opportunity for manipulation regarding parties' rights to receive distributions, which concerns inspired the Commission to propose and adopt the Rule. Therefore, the requested relief concerning the timing requirements of Rule 10b-17(b)(1)(v)(a-b) is consistent with the purposes underlying the adoption of the Rule as outlined in the Proposing Release and Adopting Release. The exemption under paragraph (c) of Rule 10b-17, which covers

⁶ The foregoing concerns were largely reiterated by the Commission in the release adopting Rule 10b-17. See Exchange Act Release No. 9192 (June 7, 1971) (the "Adopting Release").

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open-end investment companies with fully redeemable shares, thus should be applicable to the Trust with respect to the timing requirements of Rule 10b-17(b)(1)(v)(a-b).

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, including in the WisdomTree Letter. 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: Bradley Gude
Michael Berenson