



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

December 16, 2010

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

Re: AdvisorShares Trust – Actively Managed ETF
File No. TP 11-02

Dear Mr. McGuire:

In your letter dated December 16, 2010, as supplemented by conversations with the staff of the Division of Trading and Markets (“Division”), AdvisorShares Trust (the “Trust”) requests exemptive relief with respect to 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 defined in your letter, unless we note otherwise.

The Trust was organized on July 30, 2007 as a Delaware statutory trust. The Trust is registered with the Commission under the Investment Company Act of 1940, as amended (“1940 Act”), as an open-end management investment company. In September 2009, the Trust listed the individual shares of a portfolio of the Trust, Dent, on the NYSE Arca pursuant to conditions in the Staff’s letter to you regarding Dent (“Dent Letter”).¹ Subsequently, the Trust received similar relief in connection with the Mars Hill ETF (“Mars Hill ETF Letter”),² collectively, with the Dent Letter, the “Prior Request Letters.” The Trust now requests that the relief afforded in the Prior Request Letters with respect to Rule 10b-17 under the Exchange Act be afforded to the Peritus High Yield ETF (“Peritus”), Cambria Global Tactical ETF (“Cambria”), and Active Bear ETF, collectively, with Cambria and Peritus, the “Funds.”

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, stock split, or rights offering) relating to such class of securities in accordance with Rule 10b-17(b). Rule 10b-17(c) provides an exception for redeemable securities issued by open-end investment companies and unit investment trusts registered with the Commission under the 1940 Act. With regard to the Trust, the Division of Investment Management issued an order granting an exemption from the 1940 Act to register the Trust as an open-end management investment

¹ See Letter from Josephine J. Tao, Assistant Director, to W. John McGuire, Morgan, Lewis & Bockius LLP (Sep. 14, 2009) (regarding Dent ETF).

² See Letter from Josephine J. Tao, Assistant Director, to W. John McGuire, Morgan, Lewis & Bockius LLP (Jul. 2, 2010) (regarding Mars Hill ETF).

company. Except for the fact that the shares are redeemed in Creation Unit size aggregations, the Funds are intended to function like any other open-end fund continuously offering its shares.

On the basis of your representations and the facts presented, and without necessarily concurring in your analysis, particularly that the Commission has determined to grant an exemption from the 1940 Act to register the Trust as an open-end management investment company notwithstanding the fact that it issues Shares with limited redeemability, the Commission hereby grants an exemption from the requirements of Rule 10b-17 to the Trust with respect to transactions in the Shares.³

This exemptive relief is subject to modification or revocation if 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 exemptive relief are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with this and other provisions of the federal or state securities laws must rest with persons relying on this exemptive relief. The Division expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and 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

³ We also note that compliance with Rule 10b-17 would be impractical in light of the nature of the Initial Fund. 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.

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
Tel. 202.739.3000
Fax: 202.739.3001
www.morganlewis.com

RECEIVED
2010 DEC 22 PM 3:47
SEC / TM

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

W. John McGuire
Partner
202.739.5654
wjmcguire@MorganLewis.com

December 16, 2010

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, DC 20549

Re: Request of AdvisorShares Trust for Relief from Rule 10b-17 under the Securities Exchange Act of 1934 with Respect to Additional Funds

Dear Ms. Tao:

We are writing on behalf of AdvisorShares Trust ("Trust"). The Trust is an open-end series management investment company organized on July 30, 2007 as a Delaware statutory trust. The Trust is currently comprised of eight series, the Peritus High Yield ETF ("Peritus"), Cambria Global Tactical ETF ("Cambria"), Active Bear ETF ("Active Bear" and, collectively with Cambria and Peritus, the "Funds"), Emerald Rock Low Priced Focused Growth ETF, Emerald Rock Dividend Growth ETF, Mars Hill Global Relative Value ETF ("Mars Hill"), WCM/BNY Mellon Focused Growth ADR ETF and Dent Tactical ETF ("Dent"). The Trust, on behalf of itself and the Funds, requests that the Securities and Exchange Commission (the "Commission") grant exemptive, interpretive or no-action relief from Rule 10b-17 under the Securities Exchange Act of 1934 (the "Exchange Act") in connection with the operation of the Funds, as discussed below.

Summary of Previously Granted Relief

In September 2009, the Trust listed the individual shares of a portfolio of the Trust, Dent, on the NYSE Arca, Inc. ("NYSE Arca"). Prior to such time, the Trust requested relief on behalf of itself, Dent, 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 aggregations of 25,000 shares ("Creation Units").¹ The Staff granted such relief

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

in the letter addressed to John McGuire, dated September 14, 2009. Subsequently, the Trust received similar relief in connection with the Mars Hill ETF.²

The Funds will be subject to the same conditions and representations as those made in connection with Dent and Mars Hill. The Funds are structured and operate in a manner which is identical in all material respects to Dent and Mars Hill. Therefore, the Rule 10b-17 relief requested in this letter is identical to that granted in the letters concerning Dent and Mars Hill. At the time of the Mars Hill Letter, the Staff had previously issued relief from Rule 10b-17 identical to that requested herein to actively-managed exchange-traded funds ("ETFs"). The Funds are not able to rely on the Grail letter³ or the Mars Hill Letter because each is specific to the fund described therein.

The Funds

Cambria seeks to achieve its 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.

Peritus seeks to achieve its investment objective by selecting a focused portfolio of high yield debt securities, which include senior and subordinated corporate debt obligations (such as bonds, debentures, notes and commercial paper). Under normal circumstances, at least 80% of its net assets, plus any borrowings for investment purposes, will be invested in high yield debt securities with the remainder in high-quality short term debt securities and money market instruments. Peritus will not invest in derivatives. In addition, Peritus will only invest in securities of foreign corporations which are listed and traded in the United States.

Active Bear seeks to achieve its investment objective by selling short using a bottom-up, fundamental, research driven security selection process that seeks to identify securities with low earnings quality or aggressive accounting. Active Bear seeks to identify earnings driven events that may act as a catalyst to the price decline of a security, such as downwards earnings revisions or reduced forward guidance. Short positions in ETFs or other exchange-traded products ("ETPs") may be utilized to manage exposure to broad indexes or certain sectors. ETFs and ETPs may be used to gain exposure in instances when Active Bear's investment adviser has a more bearish posture with respect to the broad market.

² 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 Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5 and 15c1-6 thereunder.

³ Letter from Josephine Tao, Assistant Director, Division of Market Regulation, to Stacy L. Fuller, Esq. K&L Gates LLP (April 30, 2009).

Rule 10b-17

Rule 10b-17 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). 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 Creation Units of 25,000 Shares, the Funds are intended to function like any other open-end funds continuously offering their 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. In addition, compliance with Rule 10b-17 would be impractical in light of the nature of the Funds. This is because it is not possible for the Funds to accurately project ten days in advance what dividend, if any, would be paid on a particular record date. Therefore, the exemption under paragraph (c) of Rule 10b-17, which covers open-end investment companies with fully redeemable shares, should be applicable to the Funds.⁴

Precedent for Request to Extend Existing Relief to Funds

As discussed previously with members of your staff, given that the Funds will be structured and will operate in a manner which is identical in all material respects to Dent and Mars Hill and that the form of relief requested herein is identical to previously granted relief from Rule 10b-17, we are requesting that the Rule 10b-17 relief be extended to cover the Funds by means of submitting this brief request letter, rather than a lengthy request letter restating and amending the prior letters. The Staff has permitted this method in at least three other related contexts.⁵

Conclusion

Based on the foregoing, the Funds respectfully request that the Commission and the Division of Trading and Markets grant the relief from Rule 10b-17 requested herein. The requested Rule 10b-17 relief is identical to the relief which the Commission and the Division of

⁴ The relief being requested is analytically consistent with the Division of Market Regulation Staff Legal Bulletin No. 9 issued on September 10, 2010, which stated that, subject to certain conditions, actively managed exchange traded funds ("Active ETFs"), such as the Funds, could rely on the exceptions in Rules 101(c)(4) and 102(d)(4) of Regulation M under the Exchange Act which are only available to open-end investment companies, notwithstanding the fact that shares of Active ETFs are redeemable only in Creation Units.

⁵ See the letter from W. John McGuire, Esq., dated Aug. 20, 2009 to Josephine J. Tao, Esq., Assistant Director, Division of Market Regulation, and the response from Josephine J. Tao, Esq., dated Aug. 20, 2009; the letter from W. John McGuire, Esq., dated April 24, 2008 to Josephine J. Tao, Esq., Assistant Director, Division of Market Regulation, and the response from Josephine J. Tao, Esq., dated April 24, 2008; the letter from Kathleen H. Moriarty, Esq., dated January 19, 2007 to James A. Brigagliano, Esq., Associate Director, Division of Market Regulation, and the response from James A. Brigagliano, Esq., to Kathleen H. Moriarty, dated January 24, 2007.

Josephine J. Tao, Esq.
December 16, 2010
Page 4

Morgan Lewis
COUNSELORS AT LAW

Trading and Markets granted in the Dent and Mars Hill Letter. Should you have any questions, please call me at (202) 739-5654 or Michael Berenson at (202) 739-5450.

Sincerely,



W. John McGuire

cc: Bradley Gude, Esq.
Michael Berenson, Esq.