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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-71521; File No. SR-NASDAQ-2013-155]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to List and Trade Shares of the AdvisorShares YieldPro ETF of AdvisorShares Trust

February 11, 2014.

I. Introduction

On December 13, 2013, The NASDAQ Stock Market LLC (“Nasdaq” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade the shares (“Shares”) of the AdvisorShares YieldPro ETF (the “Fund”) under Nasdaq Rule 5735. The proposed rule change was published for comment in the Federal Register on January 2, 2014.³ The Commission received no comments on the proposal. On January 3, 2014, Nasdaq filed Amendment No. 1 to the proposal.⁴ On January 31, 2014, Nasdaq filed Amendment No. 2 to the proposal.⁵ The

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 71193 (Dec. 26, 2013), 79 FR 0173 (Jan. 2, 2014) (“Notice”).

⁴ In Amendment No. 1, Nasdaq amended the proposed rule change to clarify that certain requirements, discussed in note 7 and accompanying text, infra, are applicable to the Sub-Adviser as well as the Adviser, and to clarify through the deletion of certain text that that the Fund does not intend to invest in non-listed American Depositary Receipts (“ADRs”), swaps, or over-the-counter equity securities.

⁵ In Amendment No. 2, Nasdaq amended the proposed rule change to remove inapplicable information regarding general limitations on investments in shares of investment companies.

Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdviserShares Trust (“Trust”). The Trust is registered with the Commission as an investment company.⁶ The Fund is a series of the Trust.

AdviserShares Investments, LLC will be the investment adviser (“Adviser”) to the Fund. The Elements Financial Group, LLC will be the investment sub-adviser (“Sub-Adviser”) to the Fund. Foreside Fund Services, LLC (“Distributor”) will be the principal underwriter and distributor of the Fund’s Shares. The Bank of New York Mellon will act as the administrator, accounting agent, custodian and transfer agent to the Fund.

The Exchange represents that the Adviser and Sub-Adviser are neither a broker-dealer nor affiliated with a broker-dealer.⁷ The Exchange also represents that the Shares will be subject

⁶ The Trust has filed a registration statement on Form N-1A (“Registration Statement”) with the Commission. See Registration Statement on Form N-1A for the Trust, dated August 7, 2013 (File Nos. 333-157876 and 811-22110). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812-13677).

⁷ See Notice supra note 3, 79 FR at 0174, and Amendment No. 1, supra note 4. The Exchange states in the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with a broker-dealer, or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate, if applicable, regarding access to information concerning the composition and 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 id.

to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares⁸ and that for initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.⁹ The Exchange has made the following additional representations and statements in describing the Fund and its investment strategy, including portfolio holdings and investment restrictions.

Principal Investments

According to the Exchange, the Fund's investment objective will be to provide current income and capital appreciation. The Fund will be an actively managed exchange traded fund ("ETF") that is a "fund of funds" seeking to achieve its investment objective by primarily investing in both long and short positions in other affiliated and unaffiliated ETFs¹⁰ that offer diversified exposure to fixed income and other income producing securities. The Fund's investments may, at various times, include bonds and instruments issued by the U.S. government,¹¹ U.S. investment grade corporate debt, high yield bonds, municipal bonds, and

⁸ See Notice supra note 3 at 0177.

⁹ See 17 CFR 240.10A-3. See also Notice, supra note 3 at 0177.

¹⁰ As described in the Registration Statement, an ETF is an investment company registered under the 1940 Act that holds a portfolio of securities. Many ETFs are designed to track the performance of a securities index, including industry, sector, country and region indexes. ETFs included in the Fund will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs in excess of the limits imposed under the 1940 Act pursuant to exemptive orders obtained by other ETFs and their sponsors from the Commission. The ETFs in which the Fund may invest include Index Fund Shares (as described in Nasdaq Rule 5705), Portfolio Depositary Receipts (as described in Nasdaq Rule 5705), and Managed Fund Shares (as described in Nasdaq Rule 5735). While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X or -3X) ETFs.

¹¹ Such securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or

mortgage-backed securities. The Fund will not invest in residential-mortgage backed securities or other asset-backed securities. The Fund may also invest in equity, inverse or other types of ETFs to supplement its fixed income ETF positions. The Fund intends to invest the majority of its assets in investments that provide a competitive yield on a risk-adjusted basis. The Fund will also allocate its investments to instruments which provide little or no yield for diversification or risk management purposes.

In seeking to achieve its investment objective, the Fund may also invest directly in U.S.-traded fixed income and equity securities, certain derivatives described below, namely options, futures, and structured notes; and other exchange-traded products (“ETPs”).

The Fund may trade put and call options on securities, securities indices and currencies. The Fund may purchase put and call options on securities to protect against a decline in the market value of the securities in its portfolio or to anticipate an increase in the market value of securities that the Fund may seek to purchase in the future. The Fund may write covered call options on securities as a means of increasing the yield on its assets and as a means of providing limited protection against decreases in its market value. The Fund may purchase and write options on an exchange or over-the-counter.

The Fund may buy and sell futures contracts. The Fund will only enter into futures contracts that are traded on a national futures exchange regulated by the Commodities Futures Trading Commission (“CFTC”).¹² The Fund may use futures contracts and related options for

guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

¹² To the extent the Fund invests in futures, options on futures or other instruments subject to regulation by the CFTC, it will do so in reliance on and in compliance with CFTC regulations in effect from time to time and in accordance with the Fund’s policies. The Trust, on behalf of certain of its series, has filed a notice of eligibility for exclusion from

bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index or instrument; or other risk management purposes. The Fund may buy and sell index futures contracts with respect to any index that is traded on a recognized exchange or board of trade.

The Fund may invest in structured notes, which are debt obligations that also contain an embedded derivative component with characteristics that adjust the obligation's risk/return profile. Generally, the performance of a structured note will track that of the underlying debt obligation and the derivative embedded within it. The Fund has the right to receive periodic interest payments from the issuer of the structured notes at an agreed-upon interest rate and a return of the principal at the maturity date.

On a day-to-day basis, the Fund may hold money market instruments,¹³ cash, other cash equivalents, and ETPs that invest in these and other highly liquid instruments to collateralize its derivative or short positions.

the definition of the term "commodity pool operator" in accordance with CFTC Regulation 4.5. Therefore, neither the Trust nor the Fund is deemed to be a "commodity pool" or "commodity pool operator" with respect to the Fund under the Commodity Exchange Act ("CEA"), and they are not subject to registration or regulation as such under the CEA. In addition, as of the date of this filing, the Adviser is not deemed to be a "commodity pool operator" or "commodity trading adviser" with respect to the advisory services it provides to the Fund. The CFTC recently adopted amendments to CFTC Regulation 4.5 and has proposed additional regulatory requirements that may affect the extent to which the Fund invests in instruments that are subject to regulation by the CFTC and impose additional regulatory obligations on the Fund and the Adviser. The Fund reserves the right to engage in transactions involving futures and options thereon to the extent allowed by CFTC regulations in effect from time to time and in accordance with the Fund's policies.

¹³ For the Fund's purposes, money market instruments will include: short-term, high-quality securities issued or guaranteed by U.S. governments, agencies and instrumentalities; non-convertible corporate debt securities with remaining maturities of not more than 397 days that satisfy ratings requirements under Rule 2a-7 of the 1940 Act; money market mutual funds; and deposits and other obligations of U.S. and non-U.S.

Other Investments

The Fund may invest in certificates of deposit issued against funds deposited in a bank or savings and loan association. In addition, the Fund may invest in bankers' acceptances, which are short-term credit instruments used to finance commercial transactions.

The Fund also may invest in fixed time deposits, which are bank obligations payable at a stated maturity date and bearing interest at a fixed rate. Additionally, the Fund may invest in commercial paper, which are short-term unsecured promissory notes. The Fund may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Rating Services or Prime-1 or Prime-2 by Moody's Investors Service, Inc. or, if unrated, judged by the Adviser to be of comparable quality. Together, these Other Investments will make up less than 20% of the Fund assets under normal circumstances.

Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry or group of industries. This restriction will not apply to obligations issued or guaranteed by the U.S. government, its agencies or instrumentalities, or securities of other investment companies.

The Fund will not purchase securities of open-end or closed-end investment companies except in compliance with the 1940 Act.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

banks and financial institutions. As a related matter, according to the Registration Statement, the Fund may invest in shares of money market mutual funds to the extent permitted by the 1940 Act.

liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Additional information regarding the Trust, Fund, and Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, distributions and taxes, calculation of net asset value per share ("NAV"), availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice or the Registration Statement, as applicable.¹⁴

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of Section 6 of the Act¹⁵ and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and

¹⁴ See Notice and Registration Statement, supra notes 3 and 6, respectively.

¹⁵ 15 U.S.C. 78(f).

¹⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,¹⁸ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association plans for the Shares and any underlying exchange-traded products.¹⁹ In addition, the Intraday Indicative Value (as defined in Nasdaq Rule 5735(c)(3)) will be based upon the current value of the components of the Disclosed Portfolio (as defined in Nasdaq Rule 5735(c)(2)), will be available on the NASDAQ OMX Information LLC proprietary index data service,²⁰ and will be updated and widely disseminated and broadly displayed at least every 15 seconds during the Regular Market Session.²¹ On each business day, before commencement of trading in Shares in the Regular Market Session on the Exchange, the Fund will disclose on its website the Disclosed Portfolio, which will form the basis for the Fund's calculation of NAV at the end of the business

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁹ See Notice, supra note 3, 79 FR at 0177.

²⁰ According to the Exchange, the NASDAQ OMX Global Index Data Service is the NASDAQ OMX global index data feed service, offering real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for exchange-traded funds. See id.

²¹ See id.

day.²² The NAV of the Fund will be determined once each business day, normally as of the close of trading on the New York Stock Exchange (normally 4:00 p.m. Eastern time).²³ Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services.²⁴ Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.²⁵ Intra-day, executable price quotations for the securities and other assets held by the Fund will be available from major broker-dealer firms or on the exchange on which they are traded, as applicable.²⁶ Intra-day price information will also be available through subscription services, such as Bloomberg, Markit, and Thomson Reuters, which can be accessed by authorized participants and other investors.²⁷ The Fund's website will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.²⁸

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio

²² The website information will be publicly available at no charge. See id.

²³ See id. at 0175.

²⁴ See id. at 0177.

²⁵ See id.

²⁶ See id.

²⁷ See id.

²⁸ See id. at 0179.

will be made available to all market participants at the same time.²⁹ Further, trading in the Shares will be subject to Nasdaq 5735(d)(2)(D), which sets forth circumstances under which trading in the Shares may be halted.³⁰ The Exchange may halt trading in the Shares if trading is not occurring in the securities or the financial instruments constituting the Disclosed Portfolio or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.³¹ Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.³² The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.³³ The Exchange also states that neither the Adviser nor Sub-Adviser is a broker-dealer and that in the event (a) the Adviser or Sub-Adviser becomes, or becomes newly affiliated with a broker-dealer or registers as a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel and/or such broker-dealer affiliate regarding access to information concerning the composition of or changes to the portfolio and will be subject to procedures designed to prevent the use and dissemination of

²⁹ See id. at 0177.

³⁰ See id. at 0177,

³¹ See id. See also 5735(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Nasdaq will halt or pause trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. See Notice, supra note 3, 79 FR at 0177.

³² See Nasdaq Rule 5735(d)(2)(B)(ii).

³³ See Notice, supra note 3, 79 FR at 0178.

material, non-public information regarding the portfolio.³⁴

In support of this proposal, the Exchange has made representations, including:

- (1) The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.
- (2) The Shares will be subject to Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (3) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

³⁴ See supra note 7 and accompanying text.

- (5) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.
- (6) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and other exchange-traded securities and instruments held by the Fund with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”)³⁵ and FINRA may obtain trading information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded securities and instruments held by the Fund from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Such securities and instruments will compose at least 90% of the Fund’s assets at all times.

³⁵ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

- (7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.³⁶
- (8) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.
- (9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment); will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained; and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.
- (10) The Fund will not invest in swaps.
- (11) The Fund will not invest in leveraged or inverse leveraged ETFs.
- (12) The Fund's investments will be consistent with the Fund's investment objective.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 1 and 2 are 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

³⁶ 17 CFR 240.10A-3.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2013-155 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-NASDAQ-2013-155. 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 website (<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 website 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 Number SR-NASDAQ-2013-155, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

V. Accelerated Approval of Proposed Rule Change, As Modified by Amendment Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice in the Federal Register. The proposed Amendments state that certain responsibilities are applicable to the Sub-Adviser as well as the Adviser, and clarify that the fund will not invest in ADRs, swaps, or over-the-counter equity securities, and remove references to general limitations on investments in registered investment companies that are inapplicable to the Fund. The Amendments supplement the proposed rule change by adding protections (with respect to the additional obligations of the Sub-Adviser) and greater clarity regarding the intended investments of the Fund. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁷ to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁸ that the proposed rule change (SR-NASDAQ-2013-155), as modified by Amendment Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁹

³⁷ 15 U.S.C. 78s(b)(2).

³⁸ 15 U.S.C. 78s(b)(2).

³⁹ 17 CFR 200.30-3(a)(12).

Kevin M. O'Neill,
Deputy Secretary.

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