

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

The Exchange has neither solicited nor received comments on the proposed rule change.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²² and Rule 19b-4(f)(6) thereunder.²³

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will promote fair competition among the exchanges by allowing the Exchange to adopt the proposed rule changes contemporaneously with other exchanges. The Exchange also stated that the proposal will allow the Exchange to offer a more efficient STO Program that is harmonized internally and externally with the OLPP, and to meet customer demand for a greater number of STO classes and strike price intervals, in the same manner as other exchanges. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.²⁴

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BOX-2013-59 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-BOX-2013-59. 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 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 the 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-BOX-

2013-59 and should be submitted on or before January 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Lynn Powalski,
Deputy Secretary.

[FR Doc. 2013-31370 Filed 12-31-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71190; File No. SR-CBOE-2013-126]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to Supervision

December 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 2013, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. 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

CBOE proposes to adopt a rule requiring each Trading Permit Holder ("TPH") to establish and maintain a system of supervision and written supervisory procedures. The text of the proposed rule change is available on the Exchange's Web site at <http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>, at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Effective and comprehensive compliance policies and procedures and supervisory systems are critical to investor protection and market integrity; therefore, the Exchange proposes to adopt Rule 4.24 that would require its TPHs to establish and maintain a system to supervise each of their business activities and the activities of their associated persons.³ As more fully described below, the proposed rule would also require TPHs to: (1) establish, maintain, and enforce written supervisory procedures; (2) inspect every office or location of the TPH at least once every three calendar years; and (3) conduct an annual review and submit to the Exchange on an annual basis a written report on the TPH's supervision and compliance efforts during the preceding year.

The Exchange does not currently have a comprehensive rule that directly addresses the obligation of every TPH to properly supervise its business and employees. The proposed rule would impose a more definitive supervision requirement on TPHs than is currently contained in the Exchange's rules, and would cover all business activities of a TPH.⁴

Currently, the only supervision obligations that are expressly codified in CBOE Rules are found in Rule 4.2—*Adherence to Law* and Rule 9.8—*Supervision of Accounts*. Rule 4.2 reads as follows:

No Trading Permit Holder shall engage in conduct in violation of the Securities Exchange Act of 1934, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange

transaction, or any written interpretation thereof. Every Trading Permit Holder shall so supervise persons associated with the Trading Permit Holder as to assure compliance therewith.

While it requires a TPH to supervise persons associated with the TPH, Rule 4.2 does not expressly require a system of supervision, or written procedures covering each line of business to be established and maintained. The proposed rule would clearly place responsibility on TPHs to establish and maintain a formal plan of supervision that covers each of its business activities and associated persons.

CBOE Rule 9.8, a component of Chapter 9—*Doing Business with the Public*, is applicable only to TPHs conducting non-TPH customer business in options. The proposed rule would mirror many of the requirements in Rule 9.8, in that Rule 9.8 requires TPHs to: (1) establish, maintain, and enforce written supervisory procedures; (2) conduct office inspections; and (3) conduct an annual review and submit to the Exchange an annual written report on the TPH's supervision and compliance efforts during the preceding year. However, the proposed rule would not be limited to supervision of activities related only to TPHs conducting non-TPH customer business in options. Therefore, the proposed rule would provide greater utility for enforcing TPH obligations for other business areas such as proprietary trading.

The Exchange believes the proposed rule would clarify: (1) the responsibility of the TPH for the acts of its associated persons; and (2) the requirement of each TPH to supervise those associated persons for which it is responsible. Proposed Rule 4.24(a) would generally establish each TPH's responsibility for the supervision and control of the TPH. The proposed rule would also require that each associated person, in addition to each office, location, department, business activity, trading system, and internal surveillance system of a TPH, be under the supervision and control of an appropriately qualified supervisor as described in proposed Rule 4.24(c).⁵

Proposed Rule 4.24(b) would provide for the designation of a general partner or principal executive officer to assume overall authority and responsibility for the supervisory system of the TPH. This designee would then be responsible for: (1) Delegating to qualified principals responsibility and authority for

supervision and control of each office, location, department, business activity, trading system, and internal surveillance system, as well as providing for appropriate written procedures of supervision and control; and (2) establishing a separate system of follow-up and review to determine that the delegated responsibility and authority is properly exercised.⁶

Proposed Rules 4.24(c) and (d) would provide for the qualifications of supervisors and the standards of supervision, respectively. Under proposed paragraph (c), TPHs would have to make reasonable efforts to determine that those persons with supervisory control, as described in proposed Rules 4.24(a) and (b), are qualified by virtue of experience or training to carry out their assigned responsibilities. This paragraph would also require supervisors to meet the Exchange's qualification requirements for supervisors, including completion of the appropriate examinations.⁷ For example, CBOE Rule 3.6A—*Qualification and Registration of Trading Permit Holders and Associated Persons* sets forth required examinations for associated persons engaged in the securities business of a TPH. Proposed paragraph (d) would require that any person with supervisory control, as described in proposed Rules 4.24(a) and (b), reasonably discharge his or her duties and obligations in connection with such supervision and control in order to prevent and detect violations of applicable securities laws and regulations and applicable Exchange rules.⁸

Proposed Rule 4.24(e) would require each TPH to establish, maintain, and enforce written supervisory procedures, and a system for applying such procedures, to supervise each of its business activities and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations as well as applicable Exchange rules. The proposed rule would also require that the written supervisory procedures be amended as changes occur to a TPH's personnel or supervisory procedures and within a reasonable time after changes occur in applicable securities laws and regulations and the rules of the Exchange. Additionally, the proposed

³ Article 1, Section 1.1(f) of the Exchange's Bylaws defines "Trading Permit Holder" to mean "any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit." The proposed rule would also apply to CBOE Stock Exchange ("CBSX") Trading Permit Holders. CBSX is CBOE's stock trading facility.

⁴ The proposed rule is modeled after similar rules of other self-regulatory organizations ("SROs"), i.e., PHLX Rule 748, NASD Rule 3010, FINRA Rule 3130, NYSE Amex Rule 320, NYSE Rule 342, and NYSE Arca Rule 11.18.

⁵ Proposed Rule 4.24(a) is modeled after PHLX Rule 748(a), NYSE MKT Rule 320(b), NYSE Rule 342(a), NYSE Arca Rule 11.18(b) and NASD Rule 3010(a).

⁶ Proposed Rule 4.24(b) is modeled after PHLX Rule 748(b), NYSE MKT Rule 320(c), NYSE Rule 342(b) and NASD Rule 3010(a).

⁷ Proposed Rule 4.24(c) is modeled after NASD Rule 3010(a)(6) and PHLX Rule 748(c).

⁸ Proposed Rule 4.24(d) is modeled after PHLX Rule 748(d), NYSE MKT Rule 320(b) and NYSE Rule 342(a).

rule would require TPHs to maintain a record of the name, title, registration status and location of all supervisory personnel required by the proposed rule, the dates for which supervisory designations were or are effective, and the responsibilities of the supervisory personnel as these relate to the types of business the TPH engages in, and applicable securities laws and regulations, including applicable Exchange rules. TPHs would be required to preserve such record for a period of not less than three years, the first two in an easily accessible place. Lastly, the proposed rule would require a copy of the written supervisory procedures to be kept and maintained at each location where supervisory activities are conducted on behalf of the TPH.⁹

Proposed Rule 4.24(f) would require that each TPH perform inspections of every office or location of the TPH at least once every three calendar years. An inspection could not be conducted by any person within that office or location who has supervisory responsibilities or by any individual who is directly or indirectly supervised by such person(s). This provision is intended to help ensure that all activity of an office or location is monitored for compliance with applicable regulatory requirements by persons who do not have a personal interest in such activity. The proposed rule would require the examination schedule and an explanation of the factors considered in determining the frequency of the examinations in the cycle to be set forth in the TPH's written supervisory procedures. When establishing the inspection cycle, the TPH would be required to consider the nature and complexity of the securities activities for which the office or location is responsible, the volume of business done, and the number of associated persons at each office or location. For each inspection, the TPH would be required to retain a written record of the dates upon which each inspection is conducted, the participants involved, and the results thereof.¹⁰

As noted above, effective and comprehensive compliance policies and procedures and supervisory systems are key to investor protection and market integrity. Therefore, it is essential that TPHs put adequate emphasis on the importance of compliance throughout the firm. To promote regular discussion

and review of its supervisory system, proposed Rule 4.24(g) would require each TPH to conduct an annual review and submit to the Exchange on an annual basis a written report on the TPH's supervisory system.

Paragraph (g)(1) of proposed Rule 4.24 would require that each TPH conduct annual meetings or interviews with all associated persons to discuss compliance matters relevant to their activities. The TPH would be required to maintain a written record of the dates the meetings or interviews were held, who was present at each meeting or interview, and the results thereof.¹¹

Proposed Rule 4.24(g)(2) would require TPHs to prepare a written report on the firm's supervision and compliance efforts during the preceding year and on the adequacy of the firm's ongoing compliance processes and procedures. TPHs would be required to submit such report to the Exchange by April 1 of each year. The proposed Rule would require that the report include four elements: (1) a tabulation of customer complaints (including arbitrations and civil actions) and internal investigations, if any; (2) identification and analysis of significant compliance problems, plans for future systems or procedures to prevent and detect violations and problems, and an assessment of the preceding year's efforts of this nature; (3) discussion of the preceding year's compliance efforts, new procedures, educational programs, etc. in the areas of antifraud and trading practices, books and records, finance and operations, supervision, internal controls, and anti-money laundering; and (4) a certification signed by the TPH's Chief Executive Officer ("CEO") or equivalent officer.¹²

The certification signed by the TPH's CEO (or equivalent officer) would be required to include four components, the last three of which would be intended to foster regular and significant interaction between senior management and the Chief Compliance Officer ("CCO") regarding the TPH's comprehensive compliance program:

The first component relates to requirements found in paragraph (e) of the proposed rule.¹³ Specifically, the CEO (or equivalent officer) would be required to certify that the TPH has in place processes to: (1) establish and maintain policies and procedures reasonably designed to achieve compliance with applicable Exchange

rules and federal securities laws and regulations; (2) modify such policies and procedures as business, regulatory and legislative changes and events dictate; and (3) test the effectiveness of such policies and procedures on a periodic basis.¹⁴

The second component would require the CEO (or equivalent officer) to certify that he or she conducted one or more meetings with the firm's CCO during the preceding 12 months in which they discussed and reviewed the matters described in the certification, including the TPH's prior compliance efforts.¹⁵ The CEO (or equivalent officer) and CCO would also be required to identify and address any significant compliance problems or plans for emerging business areas.¹⁶

The third component of the certification would require the CEO (or equivalent officer) to certify that he or she reviewed a report evidencing the processes covered in the first component of the certification.¹⁷ This report would also be reviewed by the CCO and such other officers as the TPH deems necessary in order for the CEO to make the required certification. Further, the CEO would be required to certify that the report was submitted to the TPH's board of directors or audit committee by April 1st of each year. If a TPH does not utilize these types of governing bodies in the conduct of its business, the TPH would be required to have the report reviewed by any governing body or committee that serves a similar function in lieu of a board of directors or audit committee.¹⁸

The fourth component of the certification¹⁹ would require the CEO (or equivalent officer) to certify that he or she consulted with the CCO and other officers referenced in proposed Rule 4.24(g)(2)(D)(iii) and other such employees, outside consultants, lawyers and accountants, to the extent he or she deems appropriate, in order to attest to the statements made in the certification.²⁰

Finally, proposed paragraph (g)(3) would deem any TPH to have met the requirements of proposed Rules 4.24(g)(1) and (2) if the TPH specifically includes its options compliance

¹⁴ Proposed Rule 4.24(g)(2)(D)(i) is modeled after FINRA Rule 3130(c)(1) and CBOE Rule 9.8(g)(5)(i).

¹⁵ See Proposed Rule 4.24(g)(2)(D)(ii).

¹⁶ Proposed Rule 4.24(g)(2)(D)(ii) is modeled after FINRA Rule 3130(c)(2) and CBOE Rule 9.8(g)(5)(ii).

¹⁷ See Proposed Rule 4.24(g)(2)(D)(iii).

¹⁸ Proposed Rule 4.24(g)(2)(D)(iii) is modeled after FINRA Rule 3130(c)(3) and CBOE Rule 9.8(g)(5)(iii).

¹⁹ See Proposed Rule 4.24(g)(2)(D)(iv).

²⁰ Proposed Rule 4.24(g)(2)(D)(iv) is modeled after FINRA Rule 3130(c)(4) and CBOE Rule 9.8(g)(5)(iv).

⁹ Proposed Rule 4.24(e) is modeled after PHLX Rule 748(h) and NASD Rule 3010(b)(1), (3) and (4).

¹⁰ Proposed Rule 4.24(f) is modeled after PHLX Rule 748(g) and NASD Rules 3010(c)(1)(B) and (c)(3).

¹¹ Proposed Rule 4.24(g)(1) is modeled after PHLX Rule 748(e)(1).

¹² Proposed Rule 4.24(g)(2) is modeled after CBOE Rule 9.8(g)(1)–(5).

¹³ See Proposed Rule 4.24(g)(2)(D)(i).

program within an annual compliance review and written report that complies with substantially similar requirements of the Financial Industry Regulatory Authority, Inc. or any other SRO.²¹ In that case, the TPH would still be required to submit a copy of such written report to the Exchange by April 1 of each year.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) of the Act,²³ which requires that the rules of an exchange be designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Compliance with applicable Exchange rules and federal securities laws is the bedrock of investor protection and market integrity. Therefore it is critical that TPHs employ comprehensive and effective compliance policies and procedures. The Exchange believes the proposed rule change would help promote just and equitable principles of trade and protect investors and the public interest by upgrading and strengthening the Exchange's rules pertaining to supervisory obligations of its TPHs.

TPHs are on the front line of defense against fraudulent and manipulative acts and practices. TPHs are in the unique position to identify potential rule violations or other inappropriate activity and correct it before intervention by the exchanges or the Commission. The Exchange believes a comprehensive supervision rule such as proposed Rule 4.24 should help to prevent fraudulent and manipulative acts and practices consistent with Section 6(b)(5) of the Act.

The Exchange believes that the proposed rule change should strengthen the Exchange's ability to examine TPHs for compliance with supervisory requirements by compelling that written supervisory procedures be maintained. Written supervisory procedures should provide TPHs and their supervisory personnel with a clear understanding of their supervisory responsibilities thus helping to ensure that those

responsibilities are carried out effectively and efficiently. The Exchange also believes the proposal to require inspections of offices or other locations of TPHs would help strengthen the ability of TPHs to carry out their compliance and surveillance functions. By requiring written supervisory procedures and inspections that are reasonably designed to prevent and detect violations of applicable securities laws and regulations, as well as Exchange rules, the proposed rule would help to ensure that TPHs have the necessary processes in place to identify potential rule violations or inappropriate activity.

Furthermore, the Exchange believes the proposed requirements for an annual certification and written report would enhance focus on a TPH's compliance and supervision systems by promoting a dialogue throughout the TPH of its compliance efforts and procedures, thereby decreasing the likelihood of fraudulent and manipulative acts and practices and increasing investor protection.

Lastly, the Exchange believes the proposed rule change furthers the objectives of Section 6(b)(1)²⁴ of the Act, which provides that the Exchange must be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. Requiring comprehensive supervision by TPHs and their associated persons of their activities should promote the Exchange's ability to enforce compliance by TPHs and their associated persons with the Act and the regulations thereunder.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change would upgrade and strengthen the Exchange's rules pertaining to supervisory obligations of its TPHs. As noted below, the proposed rule change is based on similar rules of other SROs.

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

The Exchange neither solicited nor received comments on 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 Exchange consents, the Commission will:

- A. by order approve or disapprove such 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 Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-126 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-CBOE-2013-126. 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

²¹ Proposed Rule 4.24(g)(3) is modeled after CBOE Rule 9.8(g)(5).

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78f(b)(1).

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 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 the 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-CBOE-2013-126 and should be submitted on or before January 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Lynn M. Powalski,
Deputy Secretary.

[FR Doc. 2013-31366 Filed 12-31-13; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-71193; File No. SR-NASDAQ-2013-155]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change to List and Trade Shares of the AdvisorShares YieldPro ETF

December 26, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 13, 2013, The NASDAQ Stock Market LLC ("Nasdaq" or the "Exchange") 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 by Nasdaq. 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 the Substance of the Proposed Rule Change

Nasdaq proposes to list and trade the shares of the AdvisorShares YieldPro ETF (the "Fund") of the AdvisorShares Trust (the "Trust") under Nasdaq Rule

5735 ("Managed Fund Shares").³ The shares of the Fund are collectively referred to herein as the "Shares."

The text of the proposed rule change is available at <http://nasdaq.cchwallstreet.com/>, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares⁴ on the Exchange. The Fund will be an actively managed exchange-traded fund ("ETF"). The Shares will be offered by the Trust, which was established as a Delaware statutory trust

³ The Commission approved Nasdaq Rule 5735 in Securities Exchange Act Release No. 57962 (June 13, 2008), 73 FR 35175 (June 20, 2008) (SR-NASDAQ-2008-039). There are already multiple actively-managed funds listed on the Exchange; see Securities Exchange Act Release No. 66175 (February 29, 2012), 77 FR 13379 (March 6, 2012) (SR-NASDAQ-2012-004) (order approving listing and trading of WisdomTree Emerging Markets Corporate Bond Fund). Additionally, the Commission has previously approved the listing and trading of a number of actively-managed WisdomTree funds on NYSE Arca, Inc. pursuant to Rule 8.600 of that exchange. See, e.g., Securities Exchange Act Release No. 64643 (June 10, 2011), 76 FR 35062 (June 15, 2011) (SR-NYSEArca-2011-21) (order approving listing and trading of WisdomTree Global Real Return Fund). The Exchange believes the proposed rule change raises no significant issues not previously addressed in those prior Commission orders.

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (the "1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Index Fund Shares, listed and traded on the Exchange under Nasdaq Rule 5705, seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

on July 30, 2007.⁵ The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N-1A ("Registration Statement") with the Commission.⁶ The Fund is a series of the Trust.

AdvisorShares 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 (the "Distributor") will be the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon ("BNY Mellon") will act as the administrator, accounting agent, custodian ("Custodian") and transfer agent to the Fund.

Paragraph (g) of Rule 5735 provides that if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.⁷ In addition,

⁵ The Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act (the "Exemptive Order"). See Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812-13677). In compliance with Nasdaq Rule 5735(b)(5), which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a).

⁶ See Registration Statement on Form N-1A for the Trust, dated August 7, 2013 (File Nos. 333-157876 and 811-22110). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

⁷ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review

Continued

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.