

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90392; File No. SR-MIAX-2020-35]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Amended and Restated Certificate of Formation, Second Amended and Restated Limited Liability Company Agreement, and the Amended and Restated By-Laws

November 10, 2020.

Pursuant to the provisions of 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 October 28, 2020, Miami International Securities Exchange LLC (“MIAX Options” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been 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

The Exchange is filing a proposal to amend the Exchange's Amended and Restated Certificate of Formation (the “Certificate of Formation”), Second Amended and Restated Limited Liability Company Agreement (the “LLC Agreement”), and the Amended and Restated By-Laws (the “By-Laws”).

The text of the proposed rule change is available on the Exchange's website at <http://www.miaxoptions.com/rule-filings/> at MIAX Options' 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, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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

Changes to the Certificate of Formation

The Exchange proposes to amend the Certificate of Formation to make several non-substantive, administrative and clarifying changes. On June 17, 2011, the Exchange executed the Amended and Restated Certificate of Formation. The Exchange first proposes to amend the first paragraph of the Certificate of Formation in order to accurately reflect the amended document title and the date upon which it was executed. In particular, the Exchange proposes to delete the word “original” and the phrase “under Miami International Stock Exchange, LLC on September 10, 2007, as amended by the Certificate of Amendment, filed on April 21, 2010.”³ The Exchange proposes to insert the amended document title and date upon which the Amended and Restated Certificate of Formation was executed. With the proposed changes, the first paragraph of the Certificate of Formation will be as follows:

This filing has been executed and filed in accordance with Section 18-208 of the Limited Liability Company Act. This document is being executed for the purpose of amending and restating the Amended and Restated Certificate of Formation, filed on June 17, 2011 under file number: 4420452.

The Exchange also proposes to amend the Second clause in the Certificate of Formation to update the address of the Exchange's registered office in the State of Delaware, as well as the Exchange's registered agent. In particular, the Exchange proposes to delete the address and company name of the registered office and registered agent, respectively, as contained in the current Certificate of Formation.⁴ The Exchange proposes to insert in the Second clause of the Certificate of Formation the updated address of its registered office and the name of the Exchange's registered agent. With the proposed changes, the Second clause of the Certificate of Formation will be as follows:

The address of its registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, ZIP Code 19801. The name of its registered agent at such address is The Corporation Trust Company.

The Exchange also proposes to amend the signature line for the Certificate of Formation by deleting “Thomas P. Gallagher, Chairman,” as the signatory.⁵ In its place, the Exchange proposes to insert the signatory as “Barbara J. Comly, EVP, General Counsel & Corporate Secretary.”

The purpose of the proposed changes to the Certificate of Formation are to ensure that the Exchange's Certificate of Formation accurately reflects correct, current information, including the name of the amended document as well as the legal address and name of the registered office and registered agent for the Exchange in order to reduce potential investor or market participant confusion.

Changes to the LLC Agreement

The Exchange proposes to amend the LLC Agreement to make several non-substantive, administrative and clarifying changes. On May 20, 2011, the Exchange executed the First Amended and Restated Limited Liability Company Agreement (the “First LLC Agreement”). On December 1, 2012, the Exchange executed the Second Amended and Restated Limited Liability Company Agreement (the “Second LLC Agreement”), which restated the First LLC Agreement. The first paragraph of the LLC Agreement refers to the document as the “Operating Agreement.”⁶ The Exchange now proposes to amend the first paragraph of the LLC Agreement to reflect the current amended document, which will be the “Third Amended and Restated Limited Liability Company Agreement” (the “Third LLC Agreement”). Accordingly, the Exchange proposes to update the text in the first paragraph of the LLC Agreement to reflect this change, thereby deleting reference to the name and date of the First LLC Agreement, and inserting the name and date of the Second LLC Agreement as being amended and restated by the Third LLC Agreement. The Exchange also proposes to delete the reference to the “Operating Agreement,” for purposes of clarity and uniformity.⁷ With the proposed changes, the first paragraph of the LLC Agreement will be as follows:

Miami International Holdings, Inc., a Delaware corporation, the sole member (the “LLC Member”) of Miami International Securities Exchange, LLC, a Delaware limited liability company (the “Company”), pursuant to and in accordance with the Delaware Limited Liability Company Act, 6 Del.C. § 18-101, *et seq.* (the “LLC Act”), hereby

⁵ See *supra* note 3.

⁶ See LLC Agreement.

⁷ See *id.*

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Certificate of Formation.

⁴ See *id.*, SECOND Clause.

declares the following to be the Third Amended and Restated Limited Liability Company Agreement (the “*LLC Agreement*”) of the Company which amends and restates in its entirety the Second Amended and Restated Limited Liability Company Agreement dated December 1, 2012 of the Company. Capitalized terms not otherwise defined herein shall have the meanings set forth on *Schedule A* to this LLC Agreement.

Next, the Exchange proposes to amend Section 3 of the LLC Agreement to amend the address referenced therein for the Exchange’s principal place of business. The Exchange has increased its office space at its current address of 7 Roszel Road, Princeton, New Jersey 08540.⁸ The new mailing and principal address for the Princeton, New Jersey office is now 7 Roszel Road, Suite 1A, Princeton, New Jersey 08540. Accordingly, the Exchange proposes to amend Section 3 of the LLC Agreement to reflect the change in mailing address from “5th Floor” to “Suite 1A.”

The Exchange next proposes to amend Section 4 of the LLC Agreement to update the address of the Exchange’s registered office in the State of Delaware, as well as the Exchange’s registered agent. In particular, the Exchange proposes to delete the address and company name of the registered office and registered agent, respectively, as contained in the current LLC Agreement. The Exchange proposes to insert in Section 4 of the LLC Agreement the updated address of its registered office and the name of the Exchange’s registered agent. With the proposed changes, Section 4 of the LLC Agreement will be as follows:

The registered office of the Company required by the LLC Act to be maintained in the State of Delaware shall be 1209 Orange Street in the City of Wilmington, County of New Castle, ZIP Code 19801 or such other office as the Board of Directors may designate from time to time. The registered agent for the Company shall be The Corporation Trust Company, or such other registered agent as the Board of Directors may designate from time to time.

Next, the Exchange proposes to amend Section 6 of the LLC Agreement to clarify that Miami International Holdings, Inc. (“MIH”) is the sole LLC Member⁹ of the Exchange and to update the address for MIH, as described above. The Exchange also proposes to delete the reference to “Schedule B” and the following sentence: “The LLC Member was admitted to the Company as an LLC Member of the Company upon its execution of a counterpart signature

page to the Operating Agreement at which time it acquired 100% of the limited liability company interests of the Company.” The purpose of these changes is for administrative ease and to provide uniformity throughout the LLC Agreement. The Exchange also proposes to delete “Schedule B” from the LLC Agreement, which simply states that the LLC Member is MIH. This is duplicative information as the term “LLC Member” is defined in Schedule A to the LLC Agreement.¹⁰ Accordingly, the Exchange proposes to delete Schedule B and move the information regarding the LLC Member into Section 6.

Next, the Exchange proposes to amend Section 9 of the LLC Agreement to delete the last sentence of Section 9(a), which states, “The Directors as of the date of this LLC Agreement are set forth on Schedule C attached hereto.” Schedule C of the LLC Agreement provides the names and classifications of the Board of Directors of the Exchange as of December 1, 2012. The Exchange proposes to delete Schedule C, and all references to Schedule C, as further described below, from the LLC Agreement. The names and classifications of the Board of Directors of the Exchange are publicly available information through the Commission’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) website.¹¹ The purpose of these changes is for administrative ease and to provide uniformity throughout the LLC Agreement.

The Exchange also proposes to amend the first sentence of Section 9(c) to clarify that the By-Laws¹² of the Exchange have been adopted, thereby deleting the phrase “hereby adopt the,” in order to clarify that this has already occurred. Further, the Exchange proposes to delete the reference to “Exhibit A” in Section 9(c). Exhibit A currently provides that the By-Laws of MIAx are attached to the LLC Agreement. The Exchange provides the By-Laws as publicly available information on its website. Accordingly, additional reference to the By-Laws in Exhibit A is duplicative.

Next, the Exchange proposes to amend Section 29 of the LLC Agreement to delete the reference to “Schedule B” and provide a cross-reference to Section 6 for the address of the LLC Member, as described above. These proposed changes will provide clarity and

uniformity throughout the LLC Agreement.

The Exchange next proposes to amend “Schedule A, Definitions” to the LLC Agreement to delete the definition for “Operating Agreement.” As described above, the Exchange is amending and restating the LLC Agreement for the third time and as such, is removing the reference in the first paragraph of the LLC Agreement to the “Operating Agreement.”

Changes to the By-Laws

The Exchange proposes to amend the first paragraph of the By-Laws to make several non-substantive, administrative changes. In particular, the Exchange proposes to amend the first paragraph of the By-Laws to delete the phrases “Second Amended and Restated” and “dated as of December 1, 2012,” both of which refer to the LLC Agreement.¹³ The purpose of these changes is for administrative ease and to provide uniformity among the titles of each of the Exchange’s corporate documents. With the proposed changes, the first paragraph of the By-Laws will be as follows:

These Amended and Restated By-Laws have been established as the By-Laws of Miami International Securities Exchange, LLC, a Delaware limited liability company (the “*Company*”), pursuant to the Limited Liability Company Agreement of the Company (as amended from time to time, the “*LLC Agreement*”), and, together with the LLC Agreement, constitute the limited liability company agreement of the Company within the meaning of the LLC Act (as defined in the LLC Agreement). In the event of any inconsistency between the LLC Agreement and these By-Laws, the provision of the LLC Agreement shall control.

Finally, the Exchange proposes to make technical and conforming changes to time and date of effectiveness on the signature pages of each of the Certificate of Formation, LLC Agreement and By-Laws. The Exchange also proposes to amend the signature line of the LLC Agreement to insert the full title of the signatory as “Thomas P. Gallagher, Chairman and Chief Executive Officer.”

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.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section

¹⁰ See *id.*

¹¹ See <https://www.sec.gov/edgar/searchedgar/companysearch.html> and <https://www.sec.gov/oiea/Article/edgarguide.html> for EDGAR filing information.

¹² “By-Laws” has the meaning set forth in Section 9(c). See LLC Agreement, Schedule A, Definitions.

¹³ See By-Laws.

¹⁴ 15 U.S.C. 78f(b).

⁸ See *id.*, Section 3.

⁹ “LLC Member” means Miami International Holdings, Inc., as the sole member of the Company. See LLC Agreement, Schedule A, Definitions.

6(b)(5)¹⁵ requirements that the rules of an exchange 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes to the Certificate of Formation, LLC Agreement and By-Laws are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. The Exchange believes that the proposed changes are non-substantive, administrative changes and will reduce potential investor or market participant confusion regarding the Exchange's corporate documents. Further, the Exchange believes the proposed changes are not material and will have no impact on the governance, ownership, or operations of the Exchange.

The Exchange believes its proposal to amend the Certificate of Formation, LLC Agreement and By-Laws are consistent with the Act as the changes are to maintain accurate information regarding, among other things, the Exchange's address, registered agent and registered office.

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

The Exchange 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 does not believe the proposed rule change will impose any burden on intra-market and inter-market competition that is not necessary or appropriate in furtherance of the

purposes of the Act because the proposed changes are not intended to address competitive issues but rather are administrative, non-substantive changes that are concerned solely with updating the Certificate of Formation, LLC Agreement and By-Laws to reflect current, accurate information.

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

Written comments were neither solicited nor received.

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

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁹ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. As the proposed rule change raises no novel issues and promotes accuracy and consistency within the Exchange's Certificate of Formation, LLC Agreement, and By-Laws, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.²¹

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and 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. The Exchange has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

²¹ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 change 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-MIAX-2020-35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-MIAX-2020-35. 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 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 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. Persons submitting comments are

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ *Id.*

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MIAX-2020-35, and should be submitted on or before December 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-25264 Filed 11-16-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34092; File No. 812-15146]

AdvisorShares Trust, et al.

November 12, 2020.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

APPLICANTS: AdvisorShares Trust (the “Trust”), AdvisorShares Investments, LLC (the “Initial Adviser”), and Foreside Fund Services, LLC (the “Distributor”).

SUMMARY OF APPLICATION: Applicants request an order (“Order”) that permits: (a) ActiveShares ETFs (as described in the Reference Order (as defined below)) to issue shares (“Shares”) redeemable in large aggregations only (“creation units”); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; and (c) certain affiliated persons of an ActiveShares ETF to deposit securities into, and receive securities from, the ActiveShares ETF in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (“Reference Order”).¹

FILING DATE: The application was filed on July 31, 2020 and amended on November 3, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on December 7, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: *info@advisorshares.com*.

FOR FURTHER INFORMATION CONTACT: Jill Ehrlich, Senior Counsel, at (202) 551-6819 or Trace W. Rakestraw, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants

1. The Trust is a statutory trust established under the laws of Delaware and will consist of one or more series operating as ActiveShares ETFs. The Trust is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including two initial Funds (“Initial Funds”). The Funds will

(notice) and 33477 (May 20, 2019) (order). Applicants are not seeking relief under section 12(d)(1)(I) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the “Section 12(d)(1) Relief”), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, as granted in the Reference Order. Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference into the Order.

operate as ActiveShares ETFs as described in the Reference Order.²

2. The Initial Adviser, a Delaware limited liability company, will be the investment adviser to the Initial Funds. An Adviser (as defined below) will serve as investment adviser to each Fund. The Initial Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (“Advisers Act”). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a “Sub-Adviser”). Any Sub-Adviser will be registered under the Advisers Act.

3. The Distributor is a Delaware limited liability company and a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser (included in the term “Distributor”). Any Distributor will comply with the terms and conditions of the Order.

Applicants’ Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested Order would permit applicants to offer ActiveShares ETFs. Because the relief requested is the same as certain of the relief granted by the Commission under the Reference Order and because the Initial Adviser has entered into a license agreement with Precidian Investments LLC, or an affiliate thereof, in order to offer ActiveShares ETFs,³ the Order would incorporate by reference the terms and conditions of the same relief of the Reference Order.

5. Applicants request that the Order apply to the Initial Funds and to any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by

² To facilitate arbitrage, an ActiveShares ETF disseminates a “verified intraday indicative value” or “VIV,” reflecting the value of its portfolio holdings, calculated every second during the trading day. To protect the identity and weightings of its portfolio holdings, an ActiveShares ETF sells and redeems its Shares in creation units to authorized participants only through an unaffiliated broker-dealer acting on an agency basis.

³ Aspects of the Funds are covered by intellectual property rights, including but not limited to those which are described in one or more patent applications.

²² 17 CFR 200.30-3(a)(12).

¹ Precidian ETFs Trust, et al., Investment Company Act Release Nos. 33440 (April 8, 2019)