

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54045; File No. SR- PCX-2005-115)

June 26, 2006

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating and Order Granting Partial Accelerated Approval to Trading Shares of the Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

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 October 11, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (the “Exchange”), through its wholly owned subsidiary PCX Equities, Inc. (n/k/a/ NYSE Arca Equities, Inc.) (“NYSE Arca Equities” or the “Corporation”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.³ The Exchange filed Amendment No. 1 to the proposed rule change on November 21, 2005.⁴ The Exchange filed Amendment No. 2 to the proposed rule change on May 5, 2006.⁵ On June 21, 2006, the Commission published the proposed rule change for notice from interested persons and partially approved on an accelerated basis, as amended, that portion of the proposal pertaining to the

¹ 15 U.S.C 78s(b)(1).

² 17 CFR 240.19b-4.

³ On March 6, 2006, the Pacific Exchange, Inc. (“PCX”), filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect Archipelago’s recent acquisition of PCX and the merger of the NYSE with Archipelago. See Securities Exchange Act Release No. 56315 (April 7, 2006), 71 FR 19226 (April 13, 2006)(File No. SR-PCX-2006-24). All references herein have been changed to reflect these transactions. Telephone Conference between Lisa Dallmer, Director, NYSE Arca Equities, Inc., and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, on June 21, 2006.

⁴ Amendment No. 1 replaced and superseded the original filing in its entirety.

⁵ Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

trading, pursuant to unlisted trading privileges (“UTP”), of the Shares of the Ultra 500 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400 Fund, Short 500 Fund, Short 100 Fund, Short 30 Fund, Short Mid-Cap 400 Fund and the portion of the proposal pertaining to NYSE Arca Equities Rule 9.2(a).⁶ The Commission is now approving on an accelerated basis the remainder of the proposed rule change, as amended, pertaining to the trading, pursuant to UTP, of the Shares of the Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund, and Ultra Short Mid-Cap 400 Fund.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to trade shares (“Shares”), pursuant to UTP, the following four funds of the ProShares Trust (f/k/a xtraShares Trust) (the “Trust”): Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund and Ultra Short Mid-Cap 400 Fund (the “Funds”).

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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

1. Purpose

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may propose to list and/or trade pursuant to UTP “Investment Company Shares.” With this filing, the Exchange proposes to trade

⁶ Securities Exchange Act Release No. 54026 (June 21, 2006) (“NYSE Arca Order”).

pursuant to UTP the Shares of the Funds under NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that the Shares, which seek to provide investment results that correspond to the inverse or opposite of twice the inverse or opposite (-200%) of the index's daily performance, qualify as Investment Company Shares as defined in NYSE Arca Equities Rule 5.2(j)(3). To accommodate the trading of the Shares, the Exchange has amended NYSE Arca Equities Rule 9.2(a) ("Diligence as to Accounts"), as more fully described in the NYSE Arca Order. The Commission also previously approved the trading, pursuant to UTP, of the Shares of eight of the Funds on the Exchange in the NYSE Arca Order.

The four Funds – the Ultra Short 500, Ultra Short 100, Ultra Short 30, and Ultra Short Mid-Cap400 Funds (the "Additional Bearish Funds") – seek daily investment results, before fees and expenses, that correspond to twice (or two times) the inverse or opposite (-200%) of the daily performance of the S&P 500, Nasdaq 100, DJIA and S&P MidCap, respectively. If each of these Funds is successful in meeting its objective, the net asset value (the "NAV") of the Shares of each Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Index rise on a given day. A description of the Shares, dissemination of information about the Shares and the Funds' underlying indexes, surveillance procedures applicable to trading of the Shares on the Exchange, and the Exchange's information bulletin pertaining to the Shares is set forth in the NYSE Arca Order.⁷

⁷ See also Securities Exchange Act Release No. 54040 (June 23, 2006)(SR-AMEX-2006-41(the "Amex Order") (approval to list and trade on Amex the Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund and Ultra Short Mid-Cap 400 Fund).

(a) UTP Trading Criteria

The Exchange represents that it will cease trading the Shares of a Fund during the listing market's trading hours if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the applicable Underlying Index is no longer available at least every 15 seconds or the NAV is not disseminated to all market participants at the same time⁸; or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares of a Fund if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(b) Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. ET until 8:00 p.m. ET, even if the IIV is not disseminated from 4:15 p.m. ET to 8:00 p.m. ET.⁹ The Exchange states that it has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be \$0.01.

⁸ Telephone Conference between Lisa Dallmer, Director, NYSE Arca Equities, Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 26, 2006 (as to simultaneous NAV dissemination).

⁹ Because National Securities Clearing Corporation ("NSCC") does not disseminate the new basket amount to market participants until approximately 6:00 p.m. to 7:00 p.m. ET, an updated IIV is not possible to calculate during the Exchange's late trading session. The Exchange also states that currently the official index sponsors for the Funds' indexes do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors did so in the future, the Exchange will not trade this product unless such official index value is widely disseminated. Telephone Conference between Lisa Dallmer, Director, NYSE Arca Equities, Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 21, 2006.

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 a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule¹⁰ or by the halt or suspension of trading of the underlying securities.¹¹

Shares will be deemed “Eligible Listed Securities,” as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (“ITS”) Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest.

¹⁰ See NYSE Arca Equities Rule 7.12.

¹¹ See “UTP Trading Criteria” above for specific instances when the Exchange will cease trading the Shares.

¹² 15 U.S.C. 78s(b).

¹³ 15 U.S.C. 78s(b)(5).

In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act¹⁴ because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange's existing rules governing the trading of equity securities

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.

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

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-115 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR- PCX-2005-115. 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

¹⁴ 17 CFR 240.12f-5.

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 inspection and copying in the Commission’s Public Reference Room. 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-PCX-2005-115 and should be submitted on or before [insert date 21 days from publication in the Federal Register]

IV. Commission’s Findings and Order Granting Accelerated Partial Approval of Proposed Rule Change

The Commission previously approved the portion of the proposed rule change, as amended, pertaining to the trading pursuant to UTP of eight Funds: Ultra 500 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400 Fund, Short 500 Fund, Short 100 Fund, Short 30 Fund, and Short Mid-Cap 400 Fund (“Original Funds”).¹⁵ The Commission also previously approved the Exchange’s Rule 9.2(a) with respect to “Diligence to Accounts.”¹⁶ The Commission is now approving the portion of the proposed rule change, as amended, pertaining to the trading pursuant to UTP of the four remaining Funds: Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund, Ultra Short Mid-Cap 400 Fund (“Subsequent Funds”). With regard to the trading pursuant

¹⁵ See NYSE Arca Order, supra, note 6.

¹⁶ Id.

to UTP of the Subsequent Funds, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁷ In particular, the Commission finds that the portion of the proposed rule change pertaining to the Subsequent Funds is consistent with Section 6(b)(5) of the Act,¹⁸ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, 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.

In addition, the Commission finds that the portion of the proposal pertaining to the trading of the Original Funds is consistent with Section 12(f) of the Act,¹⁹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²⁰ The Commission notes that it previously approved the listing and trading of the Shares of all of the Funds on the Amex and the trading, pursuant to UTP, of the Original Funds on the Exchange.²¹ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²² which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange

¹⁷ In approving this 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).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78l(f).

²⁰ Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²¹ See Amex Order, supra note 7.

²² 17 CFR 240.12f-5.

extends UTP. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²³ which sets forth Congress's 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.

In connection with the Exchange's UTP of the Shares of the Subsequent Funds, the Exchange will cease trading in the Shares if: (1) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available (at least every 15 seconds during the trading day), or the NAV is not disseminated to all market participants at the same time, or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In support of the portion of the proposed rule change regarding UTP of the Shares, of the Original Funds, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.
2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the special characteristics and risks of trading the Shares.

4. The Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if (1) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available at least every 15 seconds or the NAV is not disseminated to all market participants at the same time, or (2) the listing market delists the Shares.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for partially approving the remaining portion of this proposed rule change with regard to the UTP of the Subsequent Funds before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of these Shares on the Amex is consistent with the Act.²⁴ The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

²⁴ See Amex Order, supra note 7.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-PCX-2005-115), as amended, is hereby partially approved on an accelerated basis.²⁵

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Nancy M. Morris
Secretary

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR 200.30-3(a)(12).