

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55125; File No. SR-NYSEArca-2006-87)

January 18, 2007

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 1 Thereto to Trade Shares of 81 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 November 13, 2006, NYSE Arca, Inc. (“Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On January 11, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. This order provides notice of the proposed rule change, as amended, and approves the proposal on an accelerated basis.

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

The Exchange, through NYSE Arca Equities, proposes to trade pursuant to unlisted trading privileges (“UTP”) shares (“Shares”) of 81 funds (“Funds”) of the ProShares Trust (“Trust”) based on numerous underlying securities indexes.

The text of the proposed rule change is available on the Exchange’s Web site at (<http://www.nysearca.com>), at the Exchange’s Office of the Secretary, and at the Commission.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 III 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

The Exchange proposes to trade the Shares of the 81 Funds pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3).³ The Commission has approved the original listing and trading of the Shares on the American Stock Exchange LLC (“Amex”).⁴

The Funds are referred to as the Ultra Funds, Short Funds, and UltraShort Funds, as described more fully below. Each Fund would attempt, on a daily basis, to achieve its investment objective by corresponding to a specified multiple of the performance, or the inverse performance, of a particular equity securities index that underlies that Fund (each an “Underlying Index”).

Ultra Funds:

Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes (“Ultra

³ Under NYSE Arca Equities Rule 5.2(j)(3) the Exchange may propose to list and/or trade pursuant to UTP “Investment Company Units.”

⁴ See Securities Exchange Act Release No. 55117 (January 17, 2007) (SR-Amex-2006-101).

Funds”).⁵ If such Funds meet their objective, the net asset value (the “NAV”)⁶ of the Shares of each Fund should increase (on a percentage basis) approximately twice as much as the Fund’s Underlying Index when the prices of the securities in such Index increase on a given day, and should lose approximately twice as much when such prices decline on a given day. The Short Funds and UltraShort Funds (as described below) each have investment objectives that seek investment results corresponding to an inverse performance of the Underlying Indexes.

The Ultra Funds are (1) Ultra Russell 2000, (2) Ultra S&P SmallCap 600, (3) Ultra S&P500/Citigroup Value, (4) Ultra S&P500/Citigroup Growth, (5) Ultra S&P MidCap 400/Citigroup Value, (6) Ultra S&P MidCap 400/Citigroup Growth, (7) Ultra S&P SmallCap 600/Citigroup Value, (8) Ultra S&P SmallCap 600/Citigroup Growth, (9) Ultra Basic Materials, (10) Ultra Consumer Goods, (11) Ultra Consumer Services, (12) Ultra Financials, (13) Ultra Health Care, (14) Ultra Industrials, (15) Ultra Oil & Gas, (16) Ultra Real Estate, (17) Ultra Semiconductors, (18) Ultra Technology, (19) Ultra Utilities, (20) Ultra Russell Midcap Index, (21) Ultra Russell Midcap Growth Index, (22) Ultra Russell Midcap Value Index, (23) Ultra Russell 1000 Index, (24) Ultra Russell 1000 Growth Index, (25) Ultra Russell 1000 Value Index, (26) Ultra Russell 2000 Growth Index, and (27) Ultra Russell 2000 Value Index.

⁵ The Commission has previously approved trading certain Ultra Funds, Short Funds, and UltraShort Funds of the ProShares Trust on the Exchange pursuant to UTP under NYSE Arca Equities Rule 5.2(j)(3). See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006) (SR-PCX-2005-115).

⁶ NAV per Share of each Fund is computed by dividing the value of the net assets of such Fund (i.e., the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

Short Funds:

The Exchange also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the Underlying Indexes (“Short Funds”). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately 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 as much as the respective Index gains when prices in the Index rise on a given day.

The Short Funds are (1) Short Russell 2000, (2) Short S&P SmallCap 600, (3) Short S&P500/Citigroup Value, (4) Short S&P500/Citigroup Growth, (5) Short S&P MidCap 400/Citigroup Value, (6) Short S&P MidCap 400/Citigroup Growth, (7) Short S&P SmallCap 600/Citigroup Value, (8) Short S&P SmallCap 600/Citigroup Growth, (9) Short Basic Materials, (10) Short Consumer Goods, (11) Short Consumer Services, (12) Short Financials, (13) Short Health Care, (14) Short Industrials, (15) Short Oil & Gas, (16) Short Real Estate, (17) Short Semiconductors, (18) Short Technology, (19) Short Utilities, (20) Short Russell Midcap Index, (21) Short Russell Midcap Growth Index, (22) Short Russell Midcap Value Index, (23) Short Russell 1000 Index, (24) Short Russell 1000 Growth Index, (25) Short Russell 1000 Value Index, (26) Short Russell 2000 Growth Index, and (27) Short Russell 2000 Value Index.

Ultra-Short Funds:

The Exchange also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to twice the inverse

(-200%) of the daily performance of the Underlying Indexes (“UltraShort Funds”). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares 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 such prices rise on a given day.

The UltraShort Funds include (1) UltraShort Russell 2000, (2) UltraShort S&P SmallCap 600, (3) UltraShort S&P500/Citigroup Value, (4) UltraShort S&P500/Citigroup Growth, (5) UltraShort S&P MidCap 400/Citigroup Value, (6) UltraShort S&P MidCap 400/Citigroup Growth, (7) UltraShort S&P SmallCap 600/Citigroup Value, (8) UltraShort S&P SmallCap 600/Citigroup Growth, (9) UltraShort Basic Materials, (10) UltraShort Consumer Goods, (11) UltraShort Consumer Services, (12) UltraShort Financials, (13) UltraShort Health Care, (14) UltraShort Industrials, (15) UltraShort Oil & Gas, (16) UltraShort Real Estate, (17) UltraShort Semiconductors, (18) UltraShort Technology, (19) UltraShort Utilities, (20) UltraShort Russell Midcap Index, (21) UltraShort Russell Midcap Growth Index, (22) UltraShort Russell Midcap Value Index, (23) UltraShort Russell 1000 Index, (24) UltraShort Russell 1000 Growth Index, (25) UltraShort Russell 1000 Value Index, (26) UltraShort Russell 2000 Growth Index, and (27) UltraShort Russell 2000 Value Index.

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. Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association (“CTA”) and CQ High Speed Lines information with

respect to an Indicative Intra-Day Value (“IIV”) (as defined and discussed below), quotations for and last sale information concerning the shares, recent NAV, shares outstanding, and estimated and total cash amount per Creation Unit. Amex would make available on its Web site daily trading volume, closing price, NAV and final dividend amounts to be paid for each Fund. The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4:00 p.m. Eastern Time (“ET”). The NAV would be calculated and disseminated at the same time to all market participants.⁷

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various Web sites such as www.bloomberg.com. Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

The value of each Underlying Index would be updated intra-day on a real-time basis as its individual component securities change in price, and the intra-day values of each Underlying Index would be disseminated at least every 15 seconds throughout Amex’s trading day (i.e., the Exchange’s Core Trading Session) by Amex or another organization authorized by the relevant Underlying Index provider.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex would disseminate

⁷ Amex has represented that if the NAV is not disseminated to all market participants at the same time, it would halt trading in the shares of the Funds. If Amex halts trading for this reason, then the Exchange would do so as well.

through the facilities of the CTA: (1) continuously throughout Amex's trading day (i.e., the Exchange's Core Trading session), the market value of a Share; and (2) at least every 15 seconds throughout Amex's trading day (i.e., the Exchange's Core Trading session), the IIV as calculated by the Amex. Comparing these two figures helps an investor to determine whether, and to what extent, the Shares may be selling at a premium or a discount to NAV.

Shares would 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.⁸ The Exchange has appropriate rules to facilitate transactions in the Shares during these trading sessions.

Each investor would have access to the current portfolio composition of each Fund through the Trust's Web site (www.proshares.com)⁹ and/or at Amex's Web site (www.amex.com).

⁸ Because 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 (from 4:15 p.m. to 8:00 p.m. ET). The Exchange also states that the official index sponsors for the Underlying Indexes currently do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors do so in the future, the Exchange would not trade this product unless such official index value is widely disseminated.

⁹ The Trust's Web site is publicly accessible at no charge, and contains the following information for each Fund's Shares: (1) the prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund would inform investors

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 would 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.

Moreover, the Exchange represents that it would cease trading the Shares of a Fund if the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12. UTP trading in the Shares is also governed by the trading halts provisions of NYSE ARCA Equities Rule 7.34 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying index.

Shares would 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 would 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.

that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

¹⁰ See NYSE Arca Equities Rule 7.12.

Unless exemptive or no-action relief is available, the Shares would be subject to the short sale rule, Rule 10a-1, and Regulation SHO under the Act. If exemptive or no-action relief is provided, the Exchange would issue a notice detailing the terms of the exemption or relief.

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin would discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

The Information Bulletin would reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin would also discuss any exemptive, no-action, interpretive relief granted by the Commission from any rules under the Act. The Information Bulletin would disclose that the NAV for the Shares would be calculated after 4:00 p.m. ET each trading day.

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that 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. The Exchange's current

trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Finally, the Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG.¹¹

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 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition, the Exchange believes that the proposed rule change is consistent with Rule 12f-5¹⁴ under the Act because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange’s rules governing the trading of equity securities.

¹¹ For a list of the current members and affiliate members of ISG, [see www.isgportal.com](http://www.isgportal.com).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 240.12f-5.

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

The Exchange does not believe that the proposed rule change would 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 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-NYSEArca-2006-87 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NYSEArca-2006-87. 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 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-NYSEArca-2006-87 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 Approval of the Proposed Rule Change

After careful review, 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.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ 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

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

¹⁶ 15 U.S.C. 78f(b)(5).

and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,¹⁷ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.¹⁸ The Commission notes that it previously approved the listing and trading of the Shares on Amex.¹⁹ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁰ 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 extends UTP. The Exchange has represented that it meets this requirement because it 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.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²¹ 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

¹⁷ 15 U.S.C. 78l(f).

¹⁸ 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.

¹⁹ See supra note 4.

²⁰ 17 CFR 240.12f-5.

²¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, will be calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the Exchange's Core Trading Session. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares. The Exchange has represented that it would follow the procedures with respect to trading halts set forth in NYSE Arca Equities Rule 7.34.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

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

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.
2. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.
3. Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

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

The Commission finds good cause for approving this proposal 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 the Shares on Amex is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that finding or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²² that the proposed rule change (SR-NYSEArca-2006-87), as amended, be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²³

Nancy M. Morris
Secretary

²² 15 U.S.C. 78s(b)(2).

²³ 17 CFR 200.30-3(a)(12).