



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
MARKET REGULATION

January 24, 2007

Kathleen H. Moriarty, Esq.
Carter, Ledyard & Milburn
2 Wall Street
New York, NY 10005-2072

Re: *ProShares Trust*
File No. TP 07-32

Dear Ms. Moriarty:

In your letter dated January 24, 2007,¹ as supplemented by conversations with the staff of the Division of Market Regulation ("Staff"), ProShares Trust et al. (the "Trust") requests from the Staff certain relief with respect to Section 11(d)(1) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), Rules 10a-1, 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5, and 15c1-6 thereunder, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO.

The Trust was organized on May 29, 2002 as a Delaware statutory trust. The Trust is registered with the Commission under the Investment Company Act of 1940, as amended ("1940 Act") as an open-end management investment company. Each of the Trust's Original Funds has a distinct investment objective which is different than that of the other Original Funds. Each Original Fund attempts to achieve its investment objective by corresponding to a specified multiple of the daily performance, or the inverse daily performance, or a multiple of the inverse daily performance, of a particular Underlying Index. The Original Funds are indexed funds employing the same types of investment strategies as conventional index funds.

The Additional Funds are structurally identical to the Original Funds that were issued by the Trust and afforded relief by the Commission in the ProShares Response Letter. The Trust now requests that the relief afforded to the Original Funds in the ProShares Response Letter with regard to Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO, be extended to cover similar trading and other specified transactions in the Additional Funds.

In view of the substantial similarities between the Additional Funds and the Original Funds, the Staff will not recommend to the Commission enforcement action under Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO against persons or entities engaging in secondary market transactions in the Additional Funds on the AMEX or any other Market or engaging in the creation and redemption of

¹ We have enclosed a photocopy of your letter. Each defined term in this letter has the same meaning as defined, directly or by reference, in your letter, unless we note otherwise.

Creation Units of the Additional Funds in reliance on the relief granted to the Trust in the ProShares Response Letter, subject to the same limitations and conditions.

As discussed, we are treating your request with respect to Section 11(d)(1) of the Exchange Act, and Rules 10b-10, 11d1-2, 15c1-5, and 15c1-6 thereunder, that the Existing Relief be extended to cover the Additional Funds as a request for confirmation that the phrase “managed to track a particular index” in condition 3 of the Class Relief Letter² includes funds such as the leveraged Additional Funds, the inverse Additional Funds, and the ultra inverse Additional Funds. We hereby confirm that the phrase “managed to track a particular index” in condition 3 of the Class Relief Letter includes funds that are managed to track a multiple of a particular index or managed to track the inverse, or a multiple of the inverse, of a particular index all of the components of which are publicly available. Accordingly, with respect to the leveraged Additional Funds, to the extent that a broker-dealer meets the other requirements in the Class Relief Letter, including the other requirements in condition 3, it could rely on the exemptive and no-action relief contained therein.

In addition, as discussed, we are treating your request that the Existing Relief be extended to cover the Additional Funds as a request that the Staff confirm that it will not recommend enforcement action to the Commission if a broker-dealer treats Shares of the inverse Additional Funds and the ultra inverse Additional Funds, for purposes of the relief from Section 11(d)(1) of the Exchange Act, and Rule 11d1-2 thereunder, in the Class Relief Letter, as shares of a Qualifying ETF (as defined in the Class Relief Letter). Given the nature of the assets in the inverse Additional Funds and the ultra inverse Additional Funds, the Staff will not recommend enforcement action to the Commission if shares of the inverse Additional Funds and the ultra inverse Additional Funds are treated as shares of a Qualifying ETF. Accordingly, with respect to the inverse Additional Funds and the ultra inverse Additional Funds, to the extent that a broker-dealer meets the other requirements in the Class Relief Letter, it could rely on the exemptive and no-action relief contained therein.

Finally, we note that we have twice expressed our views on Section 11(d)(1) and Rule 11d1-2 with respect to the extension or maintenance or the arrangement for the extension or maintenance of credit on shares of funds that are managed to track the inverse, or a multiple of the inverse, of a particular index all of the components of which are publicly available (“Inverse Funds”), in connection with secondary market transactions.³ Having stated our views, we will no longer respond to requests for relief from Section 11(d)(1) and Rule 11d1-2 relating to new Inverse Funds, unless they present novel or unusual issues.

² Condition 3 in the Class Relief Letter states: “The ETF (a) consists of a basket of twenty or more Component Securities, with no one Component Security constituting more than 25% of the total value of the ETF, and is managed to track a particular index all of the components of which are publicly available; or (b) solely for purposes of the exemptive relief for Broker-Dealer APs from Section 11(d)(1) of the Exchange Act, is an ETF with respect to which the Staff has granted Non-AP Broker-Dealers (as defined [in the Class Relief Letter]) relief from the requirements of Section 11(d)(1) in a letter dated prior to the date of this letter, provided that the ETF has not changed in such a way as to materially affect any of the facts or representations in such prior letter.”


³ In addition to this letter, see ProShares Response Letter.

Kathleen H. Moriarty, Esq.
Carter, Ledyard & Milburn
January 24, 2007
Page 3 of 3

The foregoing no-action positions taken under Section 11(d)(1) of the Exchange Act, Rules 10a-1, 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5, and 15c1-6 thereunder, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO are based solely on your representations and the facts presented to Staff, and are strictly limited to the application of those rules to transactions involving the shares of the Additional Funds under the circumstances described above, in your letter dated January 24, 2007, and in the ProShares Request Letter. Such transactions should be discontinued, pending presentation of the facts for our consideration, in the event that any material change occurs with respect to any of those facts or representations. Moreover, the foregoing no-action positions taken under Rules 10a-1, 10b-17, and 14e-5 under the Exchange Act, Rules 101 and 102 of Regulation M, and Rule 200(g) of Regulation SHO are subject to the condition that such transactions in shares of the Additional Funds, Equity Securities, or any related securities are not made for the purpose of creating actual, or apparent, active trading in or raising or otherwise affecting the price of such securities.

These no-action positions are subject to modification or revocation if at any time the Commission or Staff determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, persons relying on these no-action positions are directed to the anti-fraud and anti-manipulation provisions of the Exchange Act, particularly Sections 9(a), 10(b), and Rule 10b-5 thereunder. Responsibility for compliance with these and other provisions of the federal or state securities laws must rest with persons relying on these no-action positions. The Staff expresses no view with respect to other questions that the proposed transactions may raise, including, but not limited to, the adequacy of disclosure concerning, and the applicability of other federal and state laws to, the proposed transactions.

Very truly yours,



James A. Brigagliano
Associate Director

Attachment

CARTER LEDYARD & MILBURN LLP
Counselors at Law

2 Wall Street
New York, NY 10005-2072

Tel (212) 732-3200
Fax (212) 732-3232

1401 Eye Street, N.W.
Washington, DC 20005
(202) 898-1515

570 Lexington Avenue
New York, NY 10022
(212) 371-2720

Mr. James A. Brigagliano, Esq.
Associate Director
Trading Practices and Processing
Division of Market Regulation
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

January 19, 2007

Re: Request of ProShares Trust et al. for Additional Exemptive, Interpretive or No-Action Relief from Section 11(d)(1) of the Securities Exchange Act of 1934 and Rules 10a-1; 10b-10; 10b-17; 11d1-2; 14e-5; 15c1-5; 15c1-6, Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO promulgated under said Act with Respect to Additional Funds and Future Funds

Dear Mr. Brigagliano:

Summary of Existing Relief Previously Granted to Funds.

We are writing on behalf of ProShares Trust et al. ("Trust") and its investment portfolios (each, a "Fund", and collectively, the "Funds"). In June 2006, the Trust first listed the individual shares of twelve (12) of its Funds ("Original Funds") on the American Stock Exchange ("AMEX").¹ Prior to such time, the Trust requested relief on behalf of itself, its Original Funds, SEI Investments Distribution Co. ("Distributor") and persons or entities engaging in transactions in Shares ("Applicants"), from the staff of the Division of Market Regulation ("Staff") with respect to Section 11(d)(1) of the Securities Exchange Act of 1934 as amended ("Exchange Act"), Rules 10a-1, 10b-10, 10b-17, 11d1-2, 14e-5, 15c1-5 and 15c1-6 under the

¹The Amex received Commission approval pursuant to Section 19(b) of the Exchange Act of rules applicable to the trading of Shares of the Leveraged Funds and the Shares of the Inverse Funds (as defined in Part A I of the ProShares Request Letter defined in the next sentence), *See* Rel. No 34-52553, October 3, 2005 and has filed amendments thereto on April 28, 2006 and May 5, 2006 with respect to the Ultra Inverse Funds (also defined in Part I A of the ProShares Request Letter), *see* Rel. No 34-53784, May 10, 2006. On October 24, 2006, the Amex filed proposed rule changes with respect to ProShares Funds, and thereafter on November 22, 2006, Amex filed Amendment No. 1 to such proposed rule changes and on December 8, 2006, Amex filed Amendment No. 2 to such proposed rule changes. The rule change order was granted by the Commission on January 17, 2007, *See* Release No. 34-55117; File No. SR-Amex-2006-101. In addition, the Commission granted the requested relief to the Trust from the application of certain sections of the Investment Company Act of 1940 ("1940 Act") and the rules promulgated thereunder on behalf of itself, the Amex or any other national securities exchange ("Exchange") or national securities association on or through which the exchange traded shares of the Trust, may subsequently trade (with each such market referred to herein as a "Market") ("1940 Act Order").

Exchange Act, and Rules 101 and 102 of Regulation M and Rule 200(g) of Regulation SHO promulgated under the Exchange Act² ("ProShares Request Letter"). The Staff granted such relief ("Existing Relief") in the letter addressed to the Trust dated June 20, 2006 ("ProShares Response Letter"). A copy of the ProShares Request Letter and the ProShares Response Letter are attached hereto for your convenience. All term in this letter are as defined in the ProShares Request and ProShares Response Letters, unless otherwise defined herein.

Summary of Request to Extend Existing Relief to Additional Funds.

As we have discussed with members of your staff, the Trust subsequently filed a request to amend its 1940 Act order ("Amended Order Application ") to include additional Funds not named therein or in the ProShares Request Letter ("Additional Funds"), which amendment was noticed on December 22, 2006 (see IC Rel. No. 27609; File No. 812-13329) ("Notice") and ordered on January 18, 2007 (see IC Rel. No. 27666) ("Amended Order"). On January 25, 2007 and February 1, 2007, the Trust plans to list on the AMEX shares of various Additional Funds covered by the 1940 Act Order, and, subsequent to February 1, 2007, the Trust plans to list on the AMEX shares of various other Additional Funds covered by the Amended Order, some of which are identified in Schedule A hereto³. In the future, the Trust plans to list on the AMEX shares of other Additional Funds, as well as shares of new Funds that will be the subject of a new exemptive order to be issued under the 1940 Act ("Future Funds"). All of the Additional Funds and the Future Funds will be subject to the same conditions and representations as those made in connection with the Original Funds. The Additional Funds and Future Funds will be structured identically to the Original Funds, and are intended to track either a multiple, the inverse, or a multiple of the inverse, of a particular index, in the identical manner and to the same extent as the Original Funds. That is, the leveraged Additional Funds and Future Funds will be managed to track a multiple of a stated index whereas the inverse Additional Funds and Future Funds will be managed to track the inverse, and the ultra inverse Additional Funds and Future Funds will be managed to track a multiple of the inverse, of a particular index. Accordingly, the leveraged Additional Funds and Future Funds will hold Equity Securities, but neither the inverse Additional Funds and Future Funds nor the ultra inverse Additional Funds and Future Funds will hold Equity Securities. Therefore, the relief requested in this letter is identical to that requested in the ProShares Request Letter and granted in the ProShares Response Letter.

The Trust is aware of the various response letters issued by the Division of Market Regulation during the past few years in connection with certain "Class Relief " requested by, or on behalf of, exchange traded funds and others⁴, most recently the response letter from James A.

² See, the request letter from Kathleen H. Moriarty dated June 19, 2006 with respect to ProShares Trust et al.

³ Schedule A identifies the Additional Funds to be launched on these dates. Other Additional Funds will be launched later in 2007.

⁴ See, for example, the request letter from the Derivatives Products Committee of the Securities Industry Association dated August 26, 2005 and the response letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, to Georgia Bullitt, et al., dated November 21, 2005, (the "Class Relief Letter") with respect to an extension of relief granted in prior letters to ETFs and certain broker-dealers from Section 11(d)(1) and Rules 10b-10, 11d1-2, 15c-5 and 15c-6; letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, to Ira Hammerman, Senior Vice President and General Counsel to the Securities Industries Association dated July 18, 2005 granting relief with respect to Rule 10a-1 in riskless principal transactions; and letter from James A. Brigagliano, Assistant Director, Division of Market Regulation to Ira Hammerman, Senior Vice President and General Counsel to the Securities Industry Association, dated January 3, 2005 (collectively, the "SIA Relief

Brigagliano, Acting Associate Director, Division of Market Regulation, entitled "Class Relief for Exchange Traded Index Funds" to Stuart Strauss dated October 24, 2006, a copy of which is attached hereto ("October letter", and referred together with such other letters as the "Class Relief Letters").

The Trust has carefully reviewed the October Letter and has concluded that the Class Relief extended therein to exchange traded funds does not cover the leveraged, inverse and ultra inverse Additional Funds or Future Funds. The Additional Funds and Future Funds do not qualify for the Class Relief, because the terms of conditions 2, 3 and 5 set forth in the October Letter do not apply to the inverse and ultra inverse Additional Funds or Future Funds, and the terms of condition 5 in the October Letter may not apply to the leveraged Additional Funds or Future Funds.

The Trust notes, however, that the October Letter also states that "requests for relief for products not meeting the above criteria will continue to be considered on a case by case basis"⁵. Given that the Additional Funds and Future Funds will be structured and managed identically to the Original Funds and that relief requested herein is identical to the Existing Relief both requested in the ProShares Request Letter and granted in the ProShares Response Letter, the Trust respectfully requests that the Existing Relief be extended to cover the Additional Funds and the Future Funds on the same terms and to the same extent as that for the Original Funds.

Precedent for Request to Extend Existing Relief to Additional Funds and Future Funds.

As discussed previously with members of your staff, given that the Additional Funds will be structured and managed identically to the Original Funds and that relief requested herein is identical to the Existing Relief, we are requesting that the Existing Relief be extended to cover the Additional Funds named in Schedule A by means of submitting this brief request letter, rather than a lengthy request letter restating and amending the ProShares Request Letter. The staff has permitted this method in at least one other related context: *See* the letter from Edward S. Knight dated November 12, 2002 to James Brigagliano⁶) and the response from James Brigagliano to Edward S. Knight dated November 13, 2002⁷.

Conclusion

Letters") and the letter from James A. Brigagliano, Assistant Director, Division of Market Regulation, dated August 17, 2001 to Claire P. McGrath of the Amex for a recital of the conditions for the ETF "class exemption".

⁵ *See*, October Letter at page 7.

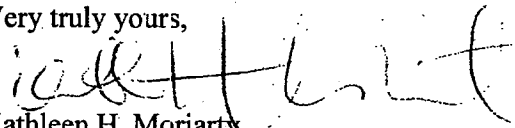
⁶ *See*, <http://www.sec.gov/divisions/marketreg/mr-noaction/nasdaq112002.pdf>

⁷ *See*, <http://www.sec.gov/divisions/marketreg/mr-noaction/nasdaq111302.htm>

Based on the foregoing and on our conversations with Staff, the Trust respectfully requests that the Commission and the Division of Market Regulation grant the relief requested herein. The forms of relief requested are identical to those actions which the Commission and the Division of Market Regulation have taken in the ProShares Response Letter.

Thank you for your consideration of this request. In light of the launch schedules for the Additional Funds set forth above, and given the identical precedent for the requested relief, the Trust is hopeful that the requests contained herein will be handled expeditiously. Should you have any questions or require additional information, please do not hesitate to call the undersigned at (212) 238-8665.

Very truly yours,



Kathleen H. Moriarty

cc:

Mr. Brian Bussey
Mr. Matthew Daigler
Ms. Racquel Russell
Division of Market Regulation

Mr. Michael Mundt
Division of Investment Management

Steven Cravath, Esq.
Steven M. Brancato, Esq.
Mr. Michael L. Sapir
ProShares Advisors LLC

Schedule A

List of Additional Funds

January 25, 2007

Ultra Russell 2000 ProShares
Ultra Small Cap 600 ProShares
Short Russell 2000 ProShares
Short Small Cap 600 ProShares
UltraShort Russell 2000 ProShares
UltraShort Small Cap 600 ProShares

February 1, 2007

Ultra Basic Materials ProShares
Ultra Consumer Goods ProShares
Ultra Consumer Services ProShares
Ultra Financials ProShares
Ultra Health Care ProShares
Ultra Industrials ProShares
Ultra Oil & Gas ProShares
Ultra Real Estate ProShares
Ultra Semiconductors ProShares
Ultra Technology ProShares
Ultra Utilities ProShares
UltraShort Basic Materials ProShares
UltraShort Consumer Goods ProShares
UltraShort Consumer Services ProShares
UltraShort Financials ProShares
UltraShort Health Care ProShares
UltraShort Industrials ProShares
UltraShort Oil & Gas ProShares
UltraShort Real Estate ProShares
UltraShort Semiconductors ProShares
UltraShort Technology ProShares
UltraShort Utilities ProShares