

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52553; File No. SR-Amex-2004-62)

October 3, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 Relating to Listing and Trading of Shares of the xtraShares Trust

I. Introduction

On August 2, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”) and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 411 (“Duty to Know and Approve Customers”) and Rule 1000A (“Index Fund Shares”) and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the performance of a securities index by a specified percentage or that seek to provide investment results that correspond to the inverse or opposite of the index’s performance. The proposed rule change will accommodate listing on the Exchange of the following eight (8) funds of the xtraShares Trust (the “Trust”): Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; UltraMid-Cap 400 Fund; Short500 Fund; Short100 Fund; Short30 Fund; and ShortMid-Cap 400 Fund (the “Funds”). On March 4, 2005, the Exchange filed Amendment No. 1.³ On May 9, 2005, the Exchange filed Amendment No. 2.⁴ The Exchange filed Amendment No. 3 on August 1, 2005.⁵ The proposed rule change,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the Exchange modified the proposed rule text and accompanying description. Amendment No. 1 replaced Amex’s original submission in its entirety.

⁴ In Amendment No. 2, the Exchange clarified the portfolio investment methodology and made certain other clarifications to the description of the proposal.

as amended, was published for comment in the Federal Register on August 9, 2005.⁶ The Commission received no comments on the proposal. On September 15, 2005, the Exchange filed Amendment No. 4.⁷ This order approves the proposed rule change as amended. Simultaneously, the Commission provides notice of, and grants accelerated approval to, Amendment No. 4.

II. Description of Proposed Rule Change

As set forth in the Notice, the Exchange proposes to amend Rule 1000A and related Commentary .02 to accommodate the listing of Index Fund Shares that seek to provide investment results that exceed the daily performance of a specified stock index by a specified percentage (e.g., equal to 200 percent of the index value) or that seek to provide investment results that correspond to the inverse or opposite of the index's daily performance.⁸

The Exchange proposes to list, under amended Rule 1000A, the shares of the Funds ("Shares"). Four of the Funds – the Ultra500, Ultra100, Ultra30, and UltraMid-Cap400 Funds (the "Bullish Funds") – seek daily investment results, before fees and expenses, that correspond

⁵ In Amendment No. 3, the Exchange provided additional details regarding the disclosure of the portfolio holdings of the Fund Shares and made certain other minor corrections to the rule text and proposal. Amendment No. 3 replaced Amex's earlier the submissions in their entirety.

⁶ See Securities Exchange Act Release No. 52197 (August 2, 2005), 70 FR 46228 ("Notice").

⁷ In Amendment No. 4, the Amex clarified that Authorized Participants ("APs"), as defined in the proposal, who create and redeem Index Fund Shares, will deposit and receive only stock and/or cash, not other financial instruments.

⁸ Amex Rules 1000A et seq. provide standards for the listing of Index Fund Shares, which are securities issued by an open-end management investment company for exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act"), as well as the Exchange Act. Index Fund Shares are defined in Rule 1000A as securities based on a portfolio of stocks or fixed income securities that seek to provide investment results that correspond generally to the price and yield of a specified foreign or domestic stock index or fixed income securities index.

to twice (200%) the daily performance of the Standard and Poor's 500® Index ("S&P 500"), the Nasdaq-100® Index ("Nasdaq 100"), the Dow Jones Industrial Averagesm ("DJIA"), and the S&P MidCap400™ Index ("S&P MidCap"), respectively. (These indexes are referred to herein as "Underlying Indexes".)⁹ Each of these Funds, if successful in meeting its objective, should gain, 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. In addition, four other Funds – the Short500, Short100, Short30, and ShortMid-Cap400 Funds (the "Bearish Funds") – seek daily investment results, before fees and expenses, which correspond to the inverse or opposite of the daily performance (-100%) of the S&P 500, Nasdaq-100, DJIA, and S&P MidCap, respectively.¹⁰ If each of these Funds is successful in meeting its objective, the net asset value (the "NAV")¹¹ of Shares of each Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index

⁹ Exchange-traded funds ("ETFs") based on each of the Underlying Indexes are listed and/or traded on the Exchange. See Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992)(S&P 500 SPDR); 39143 (September 29, 1997), 62 FR 51917 (October 3, 1997)(DIAMONDS); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999)(QQQ); and 35689 (May 8, 1995), 60 FR 26057 (May 16, 1995)(S&P MidCap 400). The Statement of Additional Information ("SAI") for the Funds discloses that each Fund reserves the right to substitute a different Index. Substitution could occur if the Index becomes unavailable, no longer serves the investment needs of shareholders, the Fund experiences difficulty in achieving investment results that correspond to the Index, or for any other reason determined in good faith by the Board. In such instance, the substitute index will attempt to measure the same general market as the current index. Shareholders will be notified (either directly or through their intermediary) in the event a Fund's current index is replaced. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b-4 filing with the Commission.

¹⁰ Id.

¹¹ The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4:00 p.m. EST.

decline on a given day, or should decrease approximately as much as the respective Index gains when the prices of the securities in the index rise on a given day.

ProFunds Advisors LLC is the investment adviser (the “Advisor”) to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.¹² While the Advisor will manage each Fund, the Trust’s Board of Trustees (the “Board”) will have overall responsibility for the Funds’ operations. The composition of the Board is, and will be, in compliance with the requirements of Section 10 of the 1940 Act, and the Funds will comply with Rule 10A-3 of the Exchange Act.

SEI Investments Distribution Company (the “Distributor” or “SEI”), a broker-dealer registered under the Exchange Act, will act as the distributor and principal underwriter of the Shares.

JPMorgan Chase Bank will act as the Index Receipt Agent for the Trust, for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List (as defined below) to National Securities Clearing Corporation (“NSCC”) and for the processing, clearance and settlement of purchase and redemption orders through the facilities of Depository Trust Company (“DTC”) and NSCC on behalf of the Trust. The Index Receipt Agent will also

¹² The Trust, Advisor, and Distributor (“Applicants”) have filed with the Commission an Application for an Order under Sections 6(c) and 17(b) of the 1940 Act (the “Application”) for the purpose of exempting the Funds of the Trust from various provisions of the 1940 Act. (File No. 812-12354). The Exchange states that the information provided in this Rule 19b-4 filing relating to the Funds is based on information included in the Application, which contains additional information regarding the Trust and Funds.

be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and NSCC.¹³

Shares of the Funds issued by the Trust¹⁴ will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund. Additional details about the Trust, the operation of the Funds, and trading of the Shares are set out in the Notice.

Investment Objective of the Funds

Each Bullish Fund will invest its assets, according to the Exchange, based upon the same strategies as conventional index funds. These Bullish Funds generally will hold at least 85% of their assets in the component equity securities (“Equity Securities”) of the relevant Underlying Index. The remainder of assets will be devoted to financial instruments (as defined below) that are intended to create the additional needed exposure to such Underlying Index necessary to pursue the Fund’s investment objective.

The Bearish Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Each Bearish Fund will rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, the inverse or opposite of the investment results of the relevant Underlying Index.

Normally 100% of the value of the portfolios of each Bearish Fund will be devoted to such financial instruments and money market instruments, including U.S. government securities and repurchase agreements (the “Money Market Instruments”).

¹³ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005 (as to Index Receipt Agent).

¹⁴ The Fund is also registered as a business trust under the Delaware Corporate Code. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

The financial instruments to be held by any of the Bullish or Bearish Funds may include stock index futures contracts, options on futures contracts,¹⁵ options on securities and indices, equity caps, collars and floors as well as swap agreements, forward contracts, repurchase agreements and reverse repurchase agreements (the “Financial Instruments”), and Money Market Instruments. The Advisor may invest in such Money Market Instruments and Financial Instruments, rather than in Equity Securities, when it would be more efficient or less expensive for the Funds.

The Exchange states that the counterparties to the swap agreements and/or forward contracts will be major broker-dealers and banks. The creditworthiness of each potential counterparty is assessed by the Advisor’s credit committee pursuant to guidelines approved by the Board. Existing counterparties are reviewed periodically by the Board. Each Fund may also enter into repurchase and reverse repurchase agreements with terms of less than one year and will only enter into such agreements with (i) members of the Federal Reserve System, (ii) primary dealers in U.S. government securities, or (iii) major broker-dealers.¹⁶ Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as “cover” for Financial Investments, as required by the 1940 Act, or to earn interest.

Additional details about the Funds’ investment techniques, including additional regulatory requirements, are described in the Notice.

¹⁵ Each Fund may engage in transactions in futures contracts on designated contract markets where such contracts trade and will only purchase and sell futures contracts traded on a U.S. futures exchange or board of trade.

¹⁶ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on September 22, 2005 (as to insertion of term “major” in describing broker-dealer counterparties).

While the Advisor will attempt to minimize any "tracking error" between the investment results of a particular Fund and the performance or inverse performance (and specified multiple thereof) of its Underlying Index, certain factors may tend to cause the investment results of a Fund to vary from such relevant Underlying Index or specified multiple thereof.¹⁷ The Funds are expected to have a daily tracking error of less than 5%¹⁸ (500 basis points) relative to the specified (inverse) multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor seeks to establish investment exposure for each Bullish and Bearish Fund corresponding to each Fund's investment objective based upon its portfolio investment methodology (the "Methodology").

The Methodology takes into account a variety of specified criteria and data (the "Inputs"), the most important of which are: (i) net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day; (ii) the amount of exposure required to the Underlying Index; and (iii) the positions in Equity Securities, Financial Instruments and/or Money Market Instruments at the beginning of each trading day. The Advisor, pursuant to the Methodology, will then mathematically determine the end-of-day positions to establish the solution (the "Solution"), which may consist of Equity Securities, Financial Instruments, and Money Market Instruments. The difference between the start-of-day positions and the required end-of-day positions is the actual amount of Equity Securities, Financial Instruments, and/or Money Market Instruments that must be bought or sold for the day.

¹⁷ Factors that may cause a Fund to vary from the relevant Underlying Index and investment objective are described in more detail in the Notice.

The Solution accordingly represents the required exposure and is converted into an order or orders, as applicable, to be filled that same day.

Generally, portfolio trades effected pursuant to the Solution are reflected in the NAV on the first business day (T+1) after the date the relevant trades are made. Thus, the NAV calculated for a Fund on any given day reflects the trades executed pursuant to the prior day's Solution. For example, trades pursuant to the Solution calculated on a Monday afternoon are executed on behalf of the Fund in question on that day. These trades will then be reflected in the NAV for that Fund that is calculated as of 4:00 p.m. on Tuesday.

The timeline for the Methodology is as follows. APs have a 3:00 p.m. cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4:00 p.m. cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the Distributor and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. the number of creation/redemption orders by APs for that day. The Advisor, taking into account creation and redemption orders for that day, then places orders, consistent with the Solution, at approximately 3:40 p.m. as market-on-close (MOC) orders. At 4:00 p.m., the Advisor will again look at the exposure to make sure that these orders placed are consistent with the Solution, and as described above, the Advisor will execute any other transactions in Financial Instruments to assure that the Fund's exposure is consistent with the Solution.

Availability of Information about the Shares and Underlying Indexes

The Trust's or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares:

¹⁸ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of terminology "in absolute return").

(i) 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;¹⁹ (ii) 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 reported closing price and NAV, and the magnitude of such premiums and discounts; (iii) its Prospectus and Product Description; and (iv) other quantitative information such as daily trading volume. The Product Description for each Fund will inform investors that the Advisor's Web site has information about the premiums and discounts at which the Fund's Shares have traded.²⁰

The Amex will 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 (the "IIV") (defined and discussed below under "Dissemination of Indicative Intra-Day Value (IIV)"), recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit (defined below). The Exchange will make available on its Web site

¹⁹ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 1, 2005 (as to removal of language regarding Web site disclosure of the "mid-point of the bid-asked spread at the time that the Fund's NAV is calculated" and substitution of Web site disclosure of the "reported closing price").

²⁰ See "Prospectus Delivery" below regarding the Product Description. The Application requests relief from Section 24(d) of the 1940 Act, which would permit dealers to sell Shares in the secondary market unaccompanied by a statutory prospectus when prospectus delivery is not required by the Securities Act of 1933. Additionally, Commentary .03 of Amex Rule 1000A requires that Amex members and member organizations provide to all purchasers of a series of Index Fund Shares a written description of the terms and characteristics of such securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time of confirmation of the first transaction in such series is delivered to such purchaser. Also, any sales material must reference the availability of such circular and the prospectus. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

daily trading volume, closing price, the NAV, and final dividend amounts, if any, to be paid for each Fund. The closing prices of the Deposit Securities (defined below) are readily available from, as applicable, exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters.

Each Fund's total portfolio composition will be disclosed on the Web site of the Trust (www.profunds.com) and/or the Exchange (www.amex.com). The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific Equity Security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the "IIV File" (described below) and the "PCF File" (described below). Therefore, the same portfolio information (including accrued expenses and dividends) will be provided on the public Web site as well as in the IIV File and PCF File provided to APs. The format of the public Web site disclosure and the IIV and PCF Files will differ because the public Web site will list all portfolio holdings, while the IIV and PCF Files will similarly provide the portfolio holdings but in a format appropriate for APs, *i.e.*, the exact components of a Creation Unit (defined below). Accordingly, all investors will have access to the current portfolio composition of each Fund through the Trust Web site at www.profunds.com and/or the Exchange's Web site at www.amex.com.²¹

²¹ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005 (as to daily disclosure to the public of the portfolio composition that will be used to calculate the Fund's NAV later that day).

Beneficial owners of Shares (“Beneficial Owners”) will receive all of the statements, notices, and reports required under the 1940 Act and other applicable laws. They will receive, for example, annual and semi-annual fund reports, written statements accompanying dividend payments, proxy statements, annual notifications detailing the tax status of fund distributions, and Form 1099-DIVs. Some of these documents will be provided to Beneficial Owners by their brokers, while others will be provided by the Fund through the brokers.

The daily closing index value and the percentage change in the daily closing index value for each Underlying Index will be publicly available on various Web sites, e.g., 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 will be updated intra-day on a real time basis as its individual component securities change in price. These intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day by the Amex or another organization authorized by the relevant Underlying Index provider.

Creation and Redemption of Shares

Each Fund will issue and redeem Shares only in initial aggregations of at least 50,000 (“Creation Units”). Purchasers of Creation Units will be able to separate the Units into individual Shares. Once the number of Shares in a Creation Unit is determined, it will not change thereafter (except in the event of a stock split or similar revaluation). The initial value of a Share for each of the Bullish Funds and Bearish Funds is expected to be in the range of \$50-\$250.

At the end of each business day, the Trust will prepare the list of names and the required number of shares of each Deposit Security (as defined below) to be included in the next trading day's Creation Unit for each Bullish Fund. The Trust will then add to the Deposit List (as defined below), the cash information effective as of the close of business on that business day and create a portfolio composition file ("PCF") for each Fund, which it will transmit (via the Index Receipt Agent) to NSCC before the open of business the next business day. The information in the PCF will be available to all participants in the NSCC system.

Because the NSCC's system for the receipt and dissemination to its participants of the PCF is not currently capable of processing information with respect to Financial Instruments, the Advisor has developed an "IIV File," which it will use to disclose the Funds' holdings of Financial Instruments.²² The IIV File will contain, for each Bullish Fund (to the extent that it holds Financial Instruments) and Bearish Fund, information sufficient by itself or in connection with the PCF File and other available information for market participants to calculate a Fund's IIV and effectively arbitrage the Fund.²³

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for Bearish Funds (e.g., the amount of the cash deposited for Creation Unit Aggregations or paid upon redemption of the Shares) and, together with the information on

²² The Trust or the Advisor will post the IIV File to a password-protected Web site before the opening of business on each business day, and all NSCC participants and the Exchange will have access to the password and the Web site containing the IIV File. However, the Fund will disclose to the public identical information, but in a format appropriate to public investors, as the same time the Fund discloses the IIV and PCF files to industry participants. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

Equity Securities contained in the PCF, will be sufficient for calculation of IIV for Bullish Funds, during such next business day.²⁴ The IIV File, together with the applicable information in the PCF in the case of Bullish Funds, will also be the basis for the next business day's NAV calculation.

For the Bullish Funds, the PCF File will be prepared by the Trust after 4:00 p.m. and transmitted by the Index Receipt Agent to NSCC by 6:30 p.m. By 6:30 p.m., all NSCC participants (such as APs) and the Exchange will also have access to the Web site containing the IIV File. The IIV File will reflect the trades made on behalf of a Fund that business day and the creation/redemption orders for that business day. Accordingly, by 6:30 p.m., APs will know the composition of the Fund's portfolio for the next trading day.

The Cash Balancing Amount (defined below) will also be determined shortly after 4:00 p.m. each business day. Although the Cash Balancing Amount for most exchange-traded funds is a small amount reflecting accrued dividends and other distributions, for both the Bullish and Bearish Funds it is expected to be larger due to changes in the value of the Financial Instruments, i.e., daily mark-to-market.²⁵

²³ An example of the information that will be provided in the IIV File for a Bullish Fund holding Equity Securities and Bearish Fund holding swaps and futures contracts (and Bullish Fund to the extent it holds such financial instruments) is set forth in the Notice.

²⁴ As noted below in "Dissemination of Indicative Intra-Day Value (IIV)," the Exchange will disseminate through the facilities of the CTA, at regular intervals (currently anticipated to be 15 second intervals) during the Exchange's regular trading hours, the IIV on a per Fund Share basis.

²⁵ See Notice for an example of the calculation of the Cash Balancing Amount.

Creation and Redemption of the Bullish Funds. The process for APs²⁶ purchasing Creation Units from Funds or redeeming Shares in Creation Unit-Size Aggregations from the Funds is set forth in the Notice. In summary, persons purchasing Creation Unit Aggregations from the Bullish Funds do so through an “in-kind” process in which a basket of securities (the “Deposit Securities”), together with an amount of cash (the “Cash Balancing Amount”), plus the applicable transaction fee is deposited with the Fund. The redeeming AP deposits Bullish Fund Shares in Creation Unit-Size Aggregations in exchange for a basket of securities (the “Redemption Securities”), which in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day. The redeeming AP may receive from or pay to the Fund a Cash Balancing Amount and also must pay to the Fund a transaction fee. A Fund has the right to require creation payments or a right to make redemption payments in cash, in kind, or a combination of each.

Creation and Redemption of the Bearish Funds. As stated, the Bearish Funds will be purchased and redeemed entirely for cash (“All-Cash Payments”). The use of an All-Cash Payment for the purchase and redemption of Creation Unit Aggregations of the Bearish Funds is due to the limited transferability of Financial Instruments.

The Exchange believes that Bearish Fund Shares will not trade at a material discount or premium to the underlying securities held by a Fund based on potential arbitrage opportunities. The arbitrage process, which provides the opportunity to profit from differences in prices of the same or similar securities, increases the efficiency of the markets and serves to prevent

²⁶ APs are the only persons that may place orders to create and redeem Creation Units. APs must be registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC.

potentially manipulative efforts. If the price of a Share deviates enough from the Creation Unit, on a per share basis, to create a material discount or premium, an arbitrage opportunity is created allowing the arbitrageur to either buy Shares at a discount, immediately cancel them in exchange for the Creation Unit and sell the underlying securities in the cash market at a profit, or sell Shares short at a premium and buy the Creation Unit in exchange for the Shares to deliver against the short position. In both instances the arbitrageur locks in a profit and the markets move back into line.²⁷

Placement of Creation Unit Aggregation Purchase and Redemption Orders

Payment with respect to Creation Unit Aggregations of the Bullish Funds placed through the Distributor generally will be made by In-Kind Payments and cash, while All-Cash Payments will be accepted in the case of the Bearish Funds and certain other cases. Placement of Creation Unit Aggregation Purchase and Redemption Orders is described in more detail in the Notice and is generally done on a T+3 basis.

Dividends

Dividends, if any, from net investment income will be declared and paid at least annually by each Fund in the same manner as by other open-end investment companies. Certain Funds

²⁷ In their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because Applicants believe it makes little difference to an arbitrageur whether Creation Unit Aggregations are purchased in exchange for a basket of securities or cash. The important function of the arbitrageur is to bid the share price of any Fund up or down until it converges with the NAV. Applicants note that this can occur regardless of whether the arbitrageur is allowed to create in cash or with a Deposit Basket. In either case, the arbitrageur can effectively hedge a position in a Fund in a variety of ways, including the use of market-on-close contracts to buy or sell the underlying Equity Securities and/or Financial Instruments.

may pay dividends on a semi-annual or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year.

Dividends and other distributions on the Shares of each Fund will be distributed, on a pro rata basis, to Beneficial Owners of such Shares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then of record with proceeds received from each Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the “Dividend Reinvestment Service”) available for use by Beneficial Owners for reinvestment of their cash proceeds but certain individual brokers may make a Dividend Reinvestment Service available to Beneficial Owners. Additional information about this service is provided in the Notice.

Dissemination of Indicative Intra-Day Value (IIV)

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Exchange will disseminate through the facilities of the CTA: (i) continuously throughout the trading day, the market value of a Share; and (ii) every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or “IIV”²⁸ as calculated by a third party calculator (the “IIV Calculator”) currently expected to be the Exchange.²⁹ 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.

²⁸ The IIV is also referred to by other issuers as an “Underlying Trading Value,” “Indicative Optimized Portfolio Value (IOPV),” and “Intra-day Value” in various places such as the prospectus and marketing materials for different exchange-traded funds.

²⁹ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex,

The IIV Calculator will calculate an IIV for each Fund, including those Funds that do not hold Equity Securities, in the manner discussed below. The IIV is designed to provide investors with a reference value that can be used in connection with other related market information. The IIV may not reflect the value of all securities included in the Underlying Index. In addition, the IIV does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the IIV on a per Share basis disseminated during Amex trading hours, should not be viewed as a real time update of the NAV of a particular Fund, which is calculated only once a day. While the IIV that will be disseminated by the Amex is expected to be close to the most recently calculated Fund NAV on a per share basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the value of the Deposit Securities during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation For the Bullish Funds holding Equity Securities and Financial Instruments. The IIV Calculator will disseminate the IIV throughout the trading day for Funds holding Equity Securities and Financial Instruments. The IIV Calculator will determine such IIV by: (i) calculating the estimated current value of Equity Securities held by such Fund by (a) calculating the percentage change in the value of the Deposit List (as provided by the Trust) and applying that percentage value to the total value of the Equity Securities in the Fund as of the close of trading on the prior trading day (as provided by the Trust) or (b) calculating the current value of all of the Equity Securities held by the Fund (as provided by the Trust); (ii) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values

and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (iii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iv) adding the values from (i), (ii), and (iii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs) to arrive at a value; and (v) dividing that value by the total shares outstanding (as provided by the Trust) to obtain the current IIV.

IIV Calculation for the Bearish Funds. The IIV Calculator will disseminate the IIV throughout the trading day for the Bearish Funds. The IIV Calculator will determine such IIV by: (i) calculating the mark-to-market gains or losses from the Fund's total return equity swap exposure based on the percentage change to the Underlying Index and the previous day's notional values of the swap contracts, if any, held by such Fund (which previous day's notional value will be provided by the Trust); (ii) calculating the mark-to-market gains or losses from futures, options, and other Financial Instrument positions by taking the difference between the current value of those positions held by the Fund, if any (as provided by the Trust), and the previous day's value of such positions; (iii) adding the values from (i) and (ii) above to an estimated cash amount provided by the Trust (which cash amount will include the swap costs), to arrive at a value; and (iv) dividing that value by the total shares outstanding (as provided by the Trust) to obtain current IIV.

Criteria for Initial and Continued Listing

The Shares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 Shares)

will be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares. As stated, the initial price of a Share is expected to be in the range of \$50-\$250.

The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Funds is \$5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex Company Guide will be based upon the year-end aggregate number of outstanding shares in all Funds of the Trust listed on the Exchange.

Stop and Stop Limit Orders

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i-v). The Exchange has designated Index Fund Shares, including the Shares, as eligible for this treatment.³⁰

Rule 190

Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Rule 190(a) should be construed to

³⁰ See Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

Prospectus Delivery

The Exchange, in an Information Circular to Exchange members and member organizations, prior to the commencement of trading, will inform members and member organizations, regarding the application of Commentary .03 to Rule 1000A the Funds. The Information Circular will further inform members and member organizations of the prospectus and/or Product Description delivery requirements that apply to the Funds. The Application included a request that the exemptive order also grant relief from Section 24(d) of the 1940 Act. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the Application.

Trading Halts

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares. These factors would include, but are not limited to, (i) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund, or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex Rule 918C). In the case of any Financial Instruments held by a Fund, the Exchange represents that a notification procedure will be implemented so that timely notice from the Advisor is received by the Exchange when a particular Financial Instrument is in default or shortly to be in default. This notification from the Advisor will be through phone, e-mail and/or fax. The Exchange would then determine on a

case-by-case basis whether a default of a particular Financial Instrument justifies a trading halt of the Shares. Trading in shares of the Funds will also be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Suitability

Prior to commencement of trading, the Exchange will issue an Information Circular to its members and member organizations providing guidance with regard to member firm compliance responsibilities (including suitability obligations) when effecting transactions in the Shares and highlighting the special risks and characteristics of the Funds and Shares as well as applicable Exchange rules. This Information Circular will set forth the requirements relating to Commentary .05 to Amex Rule 411 (Duty to Know and Approve Customers). Specifically, the Information Circular will remind members of their obligations in recommending transactions in the Shares so that members have a reasonable basis to believe that (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (ii) that the customer can evaluate the special characteristics, and is able to bear the financial risks, of such investment. In connection with the suitability obligation, the Information Circular will also provide that members make reasonable efforts to obtain the following information: (i) the customer's financial status; (ii) the customer's tax status; (iii) the customer's investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

Purchases and Redemptions in Creation Unit Size

In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Creation Unit Size are

described in each Fund's prospectus and Statement of Additional Information, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

Surveillance

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Shares. Specifically, the Amex will rely on its existing surveillance procedures governing Index Fund Shares, which have been deemed adequate under the Exchange Act. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Hours of Trading/Minimum Price Variation

The Funds will trade on the Amex until 4:15 p.m. (New York time) each business day. Shares will trade with a minimum price variation of \$.01.

III. Commission's Findings

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with Section 6 of the Act,³¹ and the rules and regulations thereunder, applicable to a national securities exchange.³² The Commission believes that the Exchange's proposed listing standards, trading rules, suitability and disclosure rules for the Funds are consistent with the Act.

A. Surveillance

The Commission believes that because the Underlying Indexes are broad-based and are composed of securities having significant trading volumes and market capitalization, improper

³¹ 15 U.S.C. 78f(b).

³² In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

trading practices in the Shares and the ability to use the Shares to manipulate the underlying securities will be limited. Moreover, the issuers of the securities comprising the Underlying Indexes are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets, and thus subject to real-time transaction reporting, which should further deter manipulation.

B. Dissemination of Information about the Shares

In approving the Funds for trading on the Amex, the Commission notes that the Underlying Indexes are broad-based, widely-disseminated indexes, which underlie numerous listed products. These index values are widely-disseminated on a real-time basis at least every 15 seconds throughout the trading day during the period in which the Shares will trade on Amex. Additionally, the Commission notes that the Exchange will disseminate through the facilities of CTA at least every 15 seconds a calculation of the IIV, along with an updated market value of the Shares. Comparing these two figures will help investors to determine whether, and to what extent, the Shares may be selling at a premium or discount to NAV and thus will facilitate arbitrage of the Shares in relation to the Index component securities.

The Commission also notes that the Trust's or Advisor's Web site and/or that of the Exchange, which is and will be publicly accessible at no charge, will contain the Shares' prior business day NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV.

The Funds' total portfolio composition will be disclosed to all market participants at the same time on the Web site of the Trust (www.profunds.com) and/or the Exchange (www.amex.com). The Commission believes that such disclosure is reasonably designed to

facilitate a functional arbitrage mechanism and mitigate the risks of improper market activity that could arise from inconsistent disclosure of information.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the Shares are consistent with the Act. Shares will trade as equity securities subject to Amex rules including, among others, rules governing trading halts, specialist activities, stop and stop limit orders, prospectus delivery, and customer suitability requirements. In addition, the Shares will be subject to Amex listing and delisting/suspension rules and procedures governing the trading of Index Fund Shares on the Exchange. The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the information circular the Exchange will distribute will inform members and member organizations about the terms, characteristics, and risks in trading the Shares.

IV. Accelerated Approval of Amendment No. 4

The Commission finds good cause for approving the proposed Amendment No. 4 before the thirtieth day of publication of notice of filing thereof in the Federal Register. The Amex filed Amendment No. 4 to clarify the proposed rule text. Specifically, Amendment No. 4 makes clear that, as part of the creation and redemption process, APs will deposit or receive only stocks and/or cash. The Commission believes that Amex's proposed changes in Amendment No. 4 clarify the proposed rule change, raise no new regulatory issues and are consistent with the Act. Based on the above, the Commission finds good cause for accelerating approval of Amendment No. 4.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether the amendment 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-Amex-2004-62 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-Amex-2004-62. 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 Amex. 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-Amex-2004-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³³ that the proposed rule change, as amended, (SR-Amex-2004-62) is approved, and that Amendment No. 4 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁴

Jonathan G. Katz
Secretary

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).