

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56866; File No. SR-ISE-2007-102)

November 29, 2007

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Permit Trading of Shares of 93 Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 25, 2007, the International Securities Exchange, LLC (“Exchange” or “ISE”) 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 November 29, 2007, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> This order provides notice of the proposed rule change and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

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

The Exchange proposes to trade shares (“Shares”) of the 93 funds identified below (collectively, “Funds”) of the ProShares Trust pursuant to unlisted trading privileges (“UTP”).

The text of the proposed rule change is available on the Exchange’s Web site ([www.ise.com](http://www.ise.com)), at the Exchange’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 supersedes and replaces the original filing in its entirety.

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

In its filing with the Commission, ISE 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.

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

1. Purpose

ISE proposes to trade pursuant to UTP the Shares of the 93 Funds, which are exchange-traded funds (“ETFs”). The Commission has previously approved the listing and trading of those ETFs on the American Stock Exchange LLC (“Amex”). The Exchange is submitting this filing because its current generic listing standards for ETFs do not extend to ETFs where the investment objective corresponds to a specified multiple of the performance, or the inverse performance, of an index that underlies a Fund (each such index is referred to below as an “Underlying Index”), rather than merely mirroring the performance of the index. These Shares are currently trading on Amex, NYSE Arca, and Nasdaq. The Funds are referred to as Ultra Funds, Short Funds, and UltraShort Funds, as described more fully below.

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 Funds”). If such a Fund meets its objective, the net asset value (“NAV”)<sup>4</sup> of the Shares of the Fund should increase (on a

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<sup>4</sup> 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

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. This filing applies to the following Ultra Funds:

- four Ultra Funds, the listing and trading of which on Amex were approved by the Commission on May 10, 2006:<sup>5</sup> (1) Ultra S&P 500, (2) Ultra Nasdaq-100, (3) Ultra Dow 30, and (4) Ultra S&P Mid-Cap 400; and
- 27 Ultra Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:<sup>6</sup> (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

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outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

<sup>5</sup> See Securities Exchange Act Release No. 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41). The Commission approved the UTP trading of these Funds on NYSE Arca and Nasdaq. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR-PCX-2005-115); Securities Exchange Act Release No. 55353 (February 26, 2007), 72 FR 9802 (March 5, 2007) (SR-Nasdaq-2007-011).

<sup>6</sup> See Securities Exchange Act Release No. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex-2006-101). Subsequently, the Commission approved the UTP trading of these Funds on NYSE Arca. See Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007) (SR-NYSEArca-2007-87) (SR-NYSEArca-2006-87).

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.

### Short Funds

ISE 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. This filing applies to the following Short Funds:

- four Short Funds, the listing and trading of which on Amex were approved by the Commission on May 10, 2006:<sup>7</sup> (1) Short S&P 500, (2) Short Nasdaq-100, (3) Short Dow 30, and (4) Short S&P Mid-Cap 400; and
- 27 Short Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:<sup>8</sup> (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)

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<sup>7</sup> See supra note 4.

<sup>8</sup> See supra note 5.

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.

### UltraShort Funds

ISE 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. This filing applies to the following UltraShort Funds:

- four UltraShort Funds, the listing and trading of which on Amex were approved by the Commission on June 23, 2006:<sup>9</sup> (1) UltraShort S&P 500, (2) UltraShort Nasdaq-100, (3) UltraShort Dow 30, and (4) UltraShort S&P Mid-Cap 400; and
- 27 UltraShort Funds, the listing and trading of which on Amex were approved by the Commission on January 17, 2007:<sup>10</sup> (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

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<sup>9</sup> See supra note 5.

<sup>10</sup> See id.

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.

Access to the current portfolio composition of each Fund is currently available through the Trust's Web site (<http://www.proshares.com>).<sup>11</sup> The Underlying Indexes are identified in the filings in which Amex proposed to list and trade the Funds (the “Original Filings”).<sup>12</sup> The Original Filings state that 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”), quotations for and last-sale information concerning the

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<sup>11</sup> 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 current and three immediately preceding 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 that the Trust’s Web site has information about the premiums and discounts at which the Fund's Shares have traded.

<sup>12</sup> See supra notes 4 and 5.

Shares, the recent NAV, the number of shares outstanding, and the estimated cash amount and total cash amount per Creation Unit. Amex will make available on its Web site the daily trading volume, closing price, NAV, and final dividend amounts, if any, 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.<sup>13</sup>

The Original Filings state that 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 <http://www.bloomberg.com>. The Original Filings further state that data regarding each Underlying Index is also available from the respective index provider to subscribers. According to the Original Filings, several independent data vendors 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 Original Filings state that the value of each Underlying Index is 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 are disseminated at least every 15 seconds throughout Amex’s trading day 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 disseminates through the facilities of the CTA: (1) continuously throughout Amex's trading day, the market value of a Share; and (2) at least every 15 seconds throughout Amex's trading day, the IIV as calculated by Amex.

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<sup>13</sup> The Original Filings explain that, if the IIV is not disseminated as required, Amex would halt trading in the shares of the Funds. If Amex halts trading for this reason, then ISE would halt trading in the Shares immediately, as set forth in ISE Rule 2123(e).

Shares would trade on ISE from 9:30 a.m. ET until 4:15 p.m. ET. ISE would halt trading in the Shares of a Fund under the conditions specified in ISE Rules 702, 703, and 2123. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of ISE Rule 2123 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the Underlying Index. Additionally, ISE may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of ISE, makes further dealings on ISE detrimental to the maintenance of a fair and orderly market. ISE will also follow any procedures with respect to trading halts as set forth in ISE rules.

The Exchange proposes to amend ISE Rule 2123 to add a subparagraph addressing the suitability responsibilities of Equity Electronic Access Members (“EAMs”) in recommending these Funds to customers. Specifically, proposed Rule 2123(l) would require an Equity EAM to have reasonable grounds for believing that the recommendation of any transaction for the purchase, sale, or exchange of any of these Funds is suitable for its customer. An Equity EAM shall base its determination of suitability upon the basis of the information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, tax status, financial situation, and needs, and any other information known by such Equity EAM.

Prior to the commencement of trading, the Exchange will inform Equity EAMs in a Regulatory Information Circular (“RIC”) of the special characteristics and risks associated with trading the Shares. Specifically, the RIC will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) proposed ISE Rule 2132(l), which imposes a duty of due diligence on Equity EAMs 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 Equity EAMs deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with a transaction; and (5) trading information.

In addition, the RIC will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The RIC will also discuss any exemptive, no-action, and/or interpretive relief granted by the Commission from the Act and rules under the Act.

The RIC will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. ET each trading day.

The Exchange intends to utilize its existing surveillance procedures applicable to equities to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares 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. Additionally, the Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG.<sup>14</sup> The Exchange also has a general policy prohibiting the distribution of material, non-public information by employees.

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<sup>14</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com).

## 2. Statutory Basis

The statutory basis under the Act for this proposed rule change is found in Section 6(b)(5),<sup>15</sup> in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general to protect investors and the public interest.

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

The proposed rule change does not 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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## 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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2007-102 on the subject line.

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<sup>15</sup> 15 U.S.C. 78f(b)(5).

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-ISE-2007-102. 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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. 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-ISE-2007-102 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 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. 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,<sup>17</sup> which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.<sup>18</sup> The Commission notes that it previously approved the listing and trading of the Shares on Amex.<sup>19</sup> The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,<sup>20</sup> 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.

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<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78l(f).

<sup>18</sup> 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.

<sup>19</sup> See supra notes 5 and 6.

<sup>20</sup> 17 CFR 240.12f-5.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>21</sup> 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 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, is calculated by Amex and published via the facilities of the CTA on a 15-second delayed basis throughout ISE's trading hours. As mentioned above, the Trust's Web site provides information relating to the value of the Shares such as the prior business day's closing NAV, the reported closing price, and daily trading volume.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. If the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares pursuant to ISE Rule 2123(e).

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 believes that its 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.

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<sup>21</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

2. Prior to the commencement of trading, the Exchange would inform EAMs in a Regulatory Information Circular of the special characteristics and risks associated with trading the Shares.
3. ISE would require its members to deliver a prospectus or product description to investors purchasing the Shares prior to or concurrently with a transaction in the Shares.

This approval order is based on the Exchange's 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 and that the trading of the Shares pursuant to UTP by NYSE Arca and Nasdaq is consistent with the Act.<sup>22</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit these findings 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.

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<sup>22</sup> See supra at notes 5 and 6.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-ISE-2007-102) as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).