

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54040; File No. SR-Amex-2006-41)

June 23, 2006

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

I. Introduction

On April 28, 2006, 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”) a proposed rule change to list and trade of shares (“Index Fund Shares”) based on the following four (4) new funds of the ProShares Trust (the “Trust”): Ultra Short 500 Fund; Ultra Short 100 Fund; Ultra Short 30 Fund; and the Ultra Short Mid-Cap 400 Fund (the “Funds”). On May 5, 2006, the Amex submitted Amendment No. 1 to the proposed rule change.² The proposed rule change, as amended by Amendment No. 1 thereto, was published for comment in the Federal Register on May 17, 2006.³ The Commission received no comments on the proposal. On June 23, 2006, the Amex submitted Amendment No. 2 to the proposed rule change.⁴ This order approves the proposed

¹ 15 U.S.C. 78s(b)(1).

² Amendment No. 1 (“Amendment No. 1”) replaced the original filing in its entirety.

³ See Securities Exchange Act Release No. 53784 (May 10, 2006), 71 FR 28721 (“Notice”).

⁴ In Amendment No. 2 (“Amendment No. 2”), the Exchange states that the Advisor (as defined below) has informed the Exchange that: (1) the net asset value (“NAV”) for the Funds will be made available to all market participants at the same time; (2) if the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the shares of the Funds; and (3) if the Fund temporarily does not disseminate the NAV to all market participants at the same time, the Exchange will immediately contact the Commission staff to discuss measures that may be appropriate under the circumstances.

rule change, as amended. Simultaneously, the Commission provides notice of Amendment No. 2, grants accelerated approval of Amendment No. 2, and solicits comments from interested persons on Amendment No. 2.

II. Description of the Proposed Rule Change

The Exchange, pursuant to Amex Rule 1000A(b)(2), proposes to list and trade the Funds that seek to provide investment results that correspond to twice (or two times) the inverse or opposite (-200%) of the index's performance.

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 under the Act. Index Fund Shares are defined in Amex Rule 1000A(b)(1) 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.

Recent amendments adopting Amex Rule 1000A(b)(2) now permit the Exchange to list and trade, upon Commission approval, Index Fund Shares that seek to provide investment results that exceed the performance of an underlying securities index by a specified multiple or that seek to provide investment results that correspond to a specified multiple of the inverse or opposite of the index's performance, if the Exchange files separate proposals under Section 19(b)⁵ of the Act, before listing and trading. Accordingly, consistent with Amex Rule 1000A(b)(2), the

⁵ 15 U.S.C. 78s(b).

Exchange now proposes to list and trade Index Fund Shares seeking investment results that correspond to twice the inverse of the underlying index's performance.

The Commission recently approved the listing and trading on Amex of the Bullish and Bearish Funds (Ultra500 Fund; Ultra100 Fund; Ultra30 Fund; Ultra Mid-Cap 400 Fund; Short500Fund; Short100 Fund; Short30 Fund; and Short Mid-Cap 400 Fund).⁶ In particular, the Original Order provides that the Bearish Funds seek to provide investment results that correspond to the inverse of the relevant underlying index's performance. The Exchange's proposal seeks to expand the Bearish Fund offerings by permitting certain Index Fund Shares to such investments results that are two (2) times the inverse of the index.

The Exchange proposes to list under Amex Rule 1000A, the shares of the Funds. The Funds seek daily investment results, before fees and expenses, that correspond to twice the inverse (-200%) of 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

⁶ See Securities Exchange Act Release No. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) ("Original Order").

“Underlying Indexes”).⁷ If each of these Funds is successful in meeting its objective, the NAV⁸ of shares of each Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the index rise on a given day.

ProShare Advisors LLC is the investment advisor (the “Advisor”) to each Fund. The Advisor is registered under the Investment Advisers Act of 1940.⁹ 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.

⁷ Exchange-traded funds (“ETFs”) based on each of the Underlying Indexes are listed and 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. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b-4 filing with the Commission, which the Commission would have to approve to permit continued trading of the product based on a substitute index. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation (“Division”), Commission, on May 10, 2006.

⁸ 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 Advisor has informed the Exchange that the NAV for each Fund will be calculated and disseminated at the same time to all market participants. See Amendment No. 2.

⁹ 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).

SEI Investments Distribution Company (the “Distributor”), a broker-dealer registered under the Act, will act as the distributor and principal underwriter of the Shares. JPMorgan Chase Bank will act as the index receipt agent (“Index Receipt Agent”), for which it will receive fees. The Index Receipt Agent will be responsible for transmitting the Deposit List to the National Securities Clearing Corporation (“NSCC”) and for the processing, clearance, and settlement of purchase and redemption orders through the facilities of the Depository Trust Company (“DTC”) and NSCC on behalf of the Trust. The Index Receipt Agent will also be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and the NSCC.

Shares of the Funds issued by the Trust will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund (the “Shares”)¹⁰. Shares will be registered in book-entry form only, and the Trust will not issue individual share certificates. The DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

Investment Objective and Techniques of the Funds

The Funds will seek daily investment results, before fees and expenses, of double the inverse or opposite (-200%) of the Underlying Index. Each Fund will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Each Fund will rely on establishing positions in financial instruments (as defined below) that provide, on a daily basis, double the inverse or opposite of the investment results of the relevant Underlying Index. Normally 100% of the value of the portfolios of each Fund will

¹⁰ The Fund is also registered as a business trust under the Delaware Corporate Code.

be devoted to such financial instruments and money market instruments, including U.S. government securities and repurchase agreements¹¹ (the “Money Market Instruments”).

The financial instruments to be held by any of the Funds may include stock index futures contracts, options on futures contracts,¹² 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.

Each Fund may enter into swap agreements and forward contracts for the purposes of attempting to gain exposure to the equity securities of its Underlying Index without actually transacting such securities. The Exchange states that 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.¹³ 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

¹¹ Repurchase agreements held by the Funds will be consistent with Rule 2a-7 under the 1940 Act, i.e., remaining maturities of 397 days or less and rated investment-grade.

¹² 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.

¹³ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on May 10, 2006 (as to insertion of term “major” in describing broker-dealer counterparties).

details about the funds' investment techniques, including additional regulatory requirements, are described in the Notice.

While the Advisor will attempt to minimize any “tracking error” between the investment results of a particular Fund and the 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.¹⁴ The Exchange states that the Funds are expected to be highly inversely correlated to each Underlying Index and investment objective (-.95 or greater).¹⁵ In each case, the Funds are expected to have a daily tracking error of less than 5% (500 basis points) relative to the specified (inverse) multiple of the performance of the relevant Underlying Index.

The Portfolio Investment Methodology

The Advisor will seek to establish an investment exposure in each portfolio corresponding to each Fund's investment objective based upon its Portfolio Investment Methodology (“Methodology”).

The Methodology takes into account a variety of specified criteria and data (the “Inputs”), the most important of which are: (1) net assets (taking into account creations and redemptions) in each Fund's portfolio at the end of each trading day, (2) the amount of required exposure to the Underlying Index, and (3) the positions in Financial Instruments and/or Money

¹⁴ Factors that may cause a Fund to vary from the relevant Underlying Index and investment objective are described in the Original Order and Notice.

¹⁵ Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the benchmark index (investment objective). The statistical measure of correlation is known as the “correlation coefficient. A correlation coefficient of +1 indicates a high direct correlation while a value of -1 indicates a strong inverse

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 required amount of exposure to the Underlying Index (the “Solution”), which will consist of 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 Financial Instruments and/or Money Market Instruments that must be bought or sold for the day. The Solution represents the required exposure and, when necessary, is converted into an order or orders 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 trade is made. Therefore, the NAV calculated for a Fund on a given day should reflect 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. ET on Tuesday.

The timeline for the Methodology is as follows. Authorized Participants (“APs” or “Authorized Participants”) have a 3:00 p.m. ET cut-off for orders submitted by telephone, facsimile, and other electronic means of communication and a 4:00 p.m. ET cut-off for orders received via mail. AP orders by mail are exceedingly rare. Orders are received by the distributor, SEI Corporation (“SEI”) and relayed to the Advisor within ten (10) minutes. The Advisor will know by 3:10 p.m. ET the number of creation/redemption orders by APs for that

correlation. A value of zero would mean that there is no correlation between the two variables.

day. Orders are then placed at approximately 3:40 p.m. ET as market-on-close (MOC) orders. At 4:00 p.m. ET, the Advisor will again look at the exposure to make sure that the 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 Web site (www.proshares.com) and/or that of the Exchange (www.amex.com), which is and will be publicly accessible at no charge, will contain the following information for each Fund's Shares: (a) 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; (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts, (c) its Prospectus and Product Description and (d) other quantitative information such as daily trading volume. The Prospectus and/or Product Description for each Fund will inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.¹⁶

¹⁶ 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.

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”) (as 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. The Exchange will make available on its Web site daily trading volume, closing price, the NAV and final dividend amounts to be paid for each Fund.

Each Fund’s total portfolio composition will be disclosed on the Web site of the Trust (www.proshares.com).¹⁷ The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, 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). 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 provided to Authorized Participants. The format of the public Web site disclosure and the IIV File will differ because the public Web site will list all portfolio holdings while the IIV File will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.*, the exact components of a Creation Unit¹⁸ Accordingly, each investor

Furthermore, any sales material will reference the availability of such circular and the prospectus.

¹⁷ Telephone Conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and David Hsu, Special Counsel, Division, Commission, on June 13, 2006.

¹⁸ The composition will be used to calculate the NAV later that day.

will have access to the current portfolio composition of each Fund through the Trust Web site at www.proshares.com.¹⁹

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 at least every 15 seconds throughout the trading day by the Amex or another major market data vendor authorized by the relevant Underlying Index provider.

¹⁹ See *supra* note 17. Telephone Conversation between Jeffrey Burn, Vice President and Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 23, 2006 (confirming Web site disclosures).

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 Funds is expected to be in the range of \$50-\$250.

Because the NSCC’s system for the receipt and dissemination to its participants of a Portfolio Composition File (“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.²⁰ The IIV File will contain, for each Fund, information sufficient for market participants to calculate a Fund’s IIV and effectively arbitrage the Fund.

For example, the following information would be provided in the IIV File for a Fund holding swaps and futures contracts: (A) the notional value of the swaps held by such Fund (together with an indication of the index on which such swap is based and whether the Fund’s position is long or short), (B) the most recent valuation of the swaps held by the Fund, (C) the notional value of any futures contracts (together with an indication of the index on which such contract is based, whether the Fund’s position is long or short and the contract’s expiration date), (D) the number of futures contracts held by the Fund (together with an indication of the index on

²⁰ 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 Authorized Participants who are also NSCC participants and the Exchange will have access to the password and the Web site containing the IIV File. However, the Fund will disclose each business day to the public identical information, but in a format appropriate to public investors, at the same time the Fund discloses the IIV and PCF files to industry participants.

which such contract is based, whether the Fund's position is long or short and the contract's expiration date), (E) the most recent valuation of the futures contracts held by the Fund, (F) the Fund's total assets and total shares outstanding, and (G) a "net other assets" figure reflecting expenses and income of the Fund to be accrued during and through the following business day and accumulated gains or losses on the Fund's Financial Instruments through the end of the business day immediately preceding the publication of the IIV File. To the extent that any Bearish Fund holds cash or cash equivalents, information regarding such Fund's cash and cash equivalent positions will be disclosed in the IIV File for such Fund.

The information in the IIV File will be sufficient for participants in the NSCC system to calculate the IIV for the Funds during such next business day. The IIV File will also be the basis for the next business day's NAV calculation.

Under normal circumstances, the Shares of the Funds will be created and redeemed entirely for cash ("All-Cash Payments"). The IIV File published before the opening of business on a business day will, however, permit NSCC participants to calculate (by means of calculating the IIV) the amount of cash required to create a Creation Unit Aggregation, and the amount of cash that will be paid upon redemption of a Creation Unit Aggregation, for each Fund for that business day. The use of an All-Cash Payment for the purchase and redemption of Creation Unit Aggregations of the Funds is due to the limited transferability of Financial Instruments.

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

The Exchange believes that Shares will not trade at a material discount or premium to the underlying portfolio assets²¹ 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 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 portfolio assets 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.²²

Placement of Creation Unit Aggregation Purchase and Redemption Orders

Creation Unit Aggregations of the Funds will be purchased and redeemed only for cash at NAV plus a transaction fee. The purchaser will make a cash payment by 12:00 p.m. ET on the third business day following the date on which the request was made (T+3).

²¹ Telephone Conversation between Jeffrey Burn, Vice President and Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on June 23, 2006 (clarifying arbitrage description).

²² 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 Financial Instruments.

Creation Unit Aggregations of the Funds will be redeemable for an All-Cash Payment equal to the NAV, less the transaction fee, generally 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 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. The SAI will inform investors of this fact and direct interested investors to contact such investor’s broker to ascertain the availability and a description of such a service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the service, and such investors should ascertain from their broker such necessary details. Shares acquired pursuant to such service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of Shares. Brokerage commissions charges and other costs, if any, incurred in purchasing Shares in the secondary market with the cash from the distributions generally will

be an expense borne by the individual beneficial owners participating in reinvestment through such service.

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) at least every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or “IIV”²³ as calculated by a third party calculator (the “IIV Calculator”).²⁴ 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.

The IIV Calculator will calculate an IIV for each Fund 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 does not necessarily reflect the precise composition of the current portfolio 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 held by a Fund may

²³ The IIV is also referred to by other issuers as an “Estimated NAV,” “Underlying Trading Value,” “Indicative Optimized Portfolio Value (IOPV),” and “Intraday Value” in various places such as the prospectus and marketing materials for different exchange-traded funds.

²⁴ The Exchange will calculate the IIV for each Fund.

diverge from the IIV during any trading day. In such case, the IIV will not precisely reflect the value of the Fund portfolio.

IIV Calculation for the Funds

The IIV Calculator will disseminate the IIV throughout the trading day for the 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 Amex Rule 1002A. A minimum of two Creation Units (at least 100,000 Shares) will be required to be outstanding at the start of trading.²⁵ 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. The

²⁵ Telephone Conversation between Nyieri Nazarian, Assistant General Counsel, Amex, and David Hsu, Special Counsel, Division, Commission, on June 13, 2006.

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

The Exchange represents the Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the ProShares.

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 Amex Rule 950(f) and Amex Rule 950 – ANTE (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.²⁶

Amex Rule 190

Amex Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including the Shares. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from

²⁶ 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 Amex Rule 154, Commentary .04(c).

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 Amex Rule 1000A to the Funds. The 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, (1) the extent to which trading is not occurring in securities comprising an Underlying Index and/or the Financial Instruments of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. (See Amex Rule 918C). In the case of the 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. Notification from the Advisor will be made by phone, facsimile, or e-mail. 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. If the NAV is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares of the Funds.²⁷

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 (1) 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 (2) 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: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4)

²⁷ See Amendment No. 2. However, if the Fund temporarily does not disseminate the NAV to all market participants at the same time, the Exchange will immediately contact Commission staff to discuss measures that may be appropriate under the circumstances. Id.

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 SAI, 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 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. ET 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,²⁸ and the rules and regulations thereunder, applicable to a national securities exchange.²⁹ 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 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

²⁸ 15 U.S.C. 78f(b).

²⁹ In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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' NAV and total portfolio composition will be disclosed to all market participants at the same time on the Web site of the Trust (www.proshares.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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, 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-2006-41 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-Amex-2006-41. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2006-41 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V Accelerated Approval

The changes proposed by Amendment No. 2 are designed to ensure that certain material information – i.e., the NAV for the Trust – is made available to all market participants at the same time. The Commission believes that these proposed changes strengthen the proposed rule change and do not raise any new regulatory issues. Therefore, the Commission finds good cause to approve Amendment No. 2 to the proposed rule change prior to the 30th day after the amendment is published for comment in the Federal Register.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁰ that the proposed rule change, as amended, (SR-Amex-2006-41) is hereby approved, and that Amendment No. 2 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.³¹

Nancy M. Morris
Secretary

³⁰ 15 U.S.C. 78s(b)(2).

³¹ 17 CFR 200.30-3(a)(12).