

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52197; File No. SR-Amex-2004-62)

August 2, 2005

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto Relating to Listing and Trading of Shares of the xtraShares Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 2, 2004, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 4, 2005, the Exchange amended its proposal.³ On May 9, 2005, the Exchange filed an additional amendment.⁴ The Exchange filed a third amendment on August 1, 2005.⁵ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Amex Rule 411 (“Duty to Know and Approve Customers”) and Rule 1000A (“Index Fund Shares”) and related Commentary .02 to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1, dated March 4, 2005 (“Amendment No. 1”). 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 See Amendment No. 2, dated May 6, 2005 (“Amendment No. 2”). In Amendment No. 2, the Exchange clarified the portfolio investment methodology and made certain other clarifications to the description of the proposal.

⁵ See Amendment No. 3, dated August 1, 2005 (“Amendment No. 3”). In Amendment No. 3, the Exchange provided additional details regarding the disclosure of the portfolio

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").

The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

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Rule 411.

Duty to Know and Approve Customers

Rule 411. Every member or member organization shall use due diligence to learn the essential facts relative to every customer and to every order or account accepted. No member or member organization shall make any transaction for the account of or with a customer unless, prior to or promptly after the completion thereof, the member, a general partner, an officer or a trustee of the member organization shall specifically approve the opening of such account, provided, however, that in the case of a branch office the opening of an account for a customer may be approved by the manager of such branch office but the action of such branch office manager shall within a reasonable time be approved by a general partner or an officer of the member organization. The member, general partner, officer or trustee approving the opening of an account shall, prior to giving his approval, be personally informed as to the essential facts

holdings of the Fund Shares and made certain other minor corrections to the rule text and

relative to the customer and to the nature of the proposed account and shall indicate his approval in writing on a document which will become part of the permanent records of his office organization.

Supervision of accounts

Every member is required either personally or through a general partner, an officer or trustee of his organization to supervise diligently all accounts handled by an employee.

...Commentary

.01 - .04 No Change

.05 Members, member organizations or registered employees thereof shall in recommending to any customer any transaction for the purchase, sale or exchange of an Index Fund Share listed pursuant to Rule 1000A(b)(2) that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple, have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the information furnished by such customer after reasonable inquiry concerning the customer's investment objectives, customer's tax status, financial situation and needs, and any other information known by such member, member organization or registered employee.

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Rule 1000A.**Index Fund Shares**

(a) **Applicability-** The Rules in this Section are applicable only to Index Fund Shares. Except to the extent specific Rules in this Section govern or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading on the Exchange of such securities. Pursuant to the provisions of Article I, Section 3(i) of the Constitution, Index Fund Shares are included within the definition of “security” or “securities” as such terms are used in the Constitution and Rules of the Exchange. In addition, pursuant to the provisions of Article IV, Section 1(b)(4) of the Constitution, Index Fund Shares are included within the definition of “derivative products” as that term is used in the Constitution and Rules of the Exchange.

(b) **Definitions.** The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(1) Index Fund Share. The term "Index Fund Share" means a security (a) that is issued by an open-end management investment company based on a portfolio of stocks or fixed income securities that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic stock index or fixed income securities; (b) that is issued by such an open-end management investment company in a specified aggregate minimum number in return for a deposit of specified numbers of shares of stock and/or a cash amount, or specified portfolio of fixed income securities and/or a cash amount, with a value equal to the next determined net asset value; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such open-end investment

company which will pay to the redeeming holder the stock and/or cash or fixed income securities and/or cash, with a value equal to the next determined net asset value.

(2) (i) The term “Index Fund Share” includes a security issued by an open-end management investment company that seeks to provide investment results that either exceed the performance of a specified foreign or domestic stock index by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified foreign or domestic index by a specified multiple. Such a security is issued in a specified aggregate number in return for a deposit of a specified number of shares of stocks, cash and/or Financial Instruments as defined in subparagraph (b)(2)(ii) of this rule with a value equal to the next determined net asset value. When aggregated in the same specified minimum number, Index Fund Shares may be redeemed at a holder’s request by such open-end investment company which will pay to the redeeming holder the stock, cash and/or Financial Instruments, with a value equal to the next determined net asset value.

(ii) In order to achieve the investment result that it seeks to provide, such an investment company may hold a combination of financial instruments, including, but not limited to, stock index futures contracts; options on futures contracts; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; and repurchase agreements (the “Financial Instruments”), but only to the extent and in the amounts or percentages as set forth in the registration statement for such Index Fund Shares.

(iii) Any open-end management investment company which issues Index Fund Shares referenced in this subparagraph (b)(2) shall not be approved by the Exchange

for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934. (See Commentary .02)

(3) [(2)] Reporting Authority. The term “Reporting Authority” in respect of a particular series of Index Fund Shares means the Exchange, a subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index or portfolio value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Index Fund Shares.

...Commentary

.01 Nothing in paragraph (b)[(2)](3) of this Rule shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange. The term “Reporting Authority” shall not refer to an institution or reporting service not so designated.

.02 The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied, and provided further, that the Exchange may not so approve a series of Index Fund Shares that has the characteristics described in Rule 1000A(b)(2):

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares pursuant to Rule 19b-4(e) under the Securities Exchange Act of

1934, each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

- (1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least \$75 million;
- (2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;
- (3) The most heavily weighted component stock cannot exceed 30% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;
- (4) The underlying index or portfolio must include a minimum of 13 stocks.
- (5) All securities in an underlying index or portfolio must be listed on a national securities exchange or the Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) – (g) No change.

.03 -.05 No Change.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

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. The Exchange is proposing 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 performance of a specified stock index by a specified percentage (*e.g.*, 110 percent or 200 percent) or that seek to provide investment results that correspond to the inverse or opposite of the index’s performance.

The Exchange proposes to list, under amended Rule 1000A, the shares of the Funds. 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 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”).⁶ 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.⁷ If each of these Funds is successful in meeting its objective, the net asset value (the “NAV”)⁸ 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 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.

⁶ 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. 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.

⁷ Id.

⁸ The NAV of each Fund is calculated and determined each business day at the close of regular trading, typically 4:00 p.m. EST.

ProFunds Advisors LLC is the investment adviser (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, 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 be responsible for the coordination and transmission of files and purchase and redemption orders between the Distributor and NSCC.¹⁰

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). 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.

¹⁰ 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).

Shares of the Funds issued by the Trust¹¹ will be a class of exchange-traded securities that represent an interest in the portfolio of a particular Fund (the “Shares”). 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 of the Funds

Each Bullish Fund will seek investment results that correspond, before fees and expenses, to twice (200%) the daily performance of an Underlying Index and will invest its assets, according to the Exchange, based upon the same strategies as conventional index funds. Rather than holding positions in equity securities (the “Equity Securities”) and financial instruments intended to create exposure to 100% of the daily performance of an Underlying Index, these Funds will hold Equity Securities and financial instruments positions designed to create exposure equal to twice (200%), before fees and expenses, of the daily performance of an Underlying Index. These Bullish Funds generally will hold at least 85% of their assets in the component 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 seek daily investment results, before fees and expenses, of the inverse or opposite (-100%) of the Underlying Index. Each of these 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

¹¹ 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.

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 agreements¹² (the “Money Market Instruments”).

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

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.¹³ The Bullish

¹² Money market funds operating pursuant to Rule 2a-7 of the 1940 Act may invest in short-term repurchase agreements that meet the definition of “Eligible Securities” in the rule. 17 CFR 270.2a-7. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

¹³ Several factors may cause a Fund to vary from the relevant Underlying Index and investment objective including: (1) a Fund’s expenses, including brokerage (which may be increased by high portfolio turnover) and the cost of the investment techniques employed by that Fund; (2) less than all of the securities in the benchmark index being held by a Fund and securities not included in the benchmark index being held by a Fund; (3) an imperfect correlation between the performance of instruments held by a Fund, such as futures contracts, and the performance of the underlying securities in the cash market;

Funds are expected to be highly correlated to each respective Underlying Index and investment objective (0.95 or greater), while the Bearish Funds are expected to be highly inversely correlated to each Underlying Index and investment objective (-0.95 or greater).¹⁴ Thus, in each case, the Funds are expected to have a daily tracking error of less than 5%¹⁵ (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

(4) bid-ask spreads (the effect of which may be increased by portfolio turnover); (5) holding instruments traded in a market that has become illiquid or disrupted; (6) a Fund's share prices being rounded to the nearest cent; (7) changes to the benchmark index that are not disseminated in advance; (8) the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements; and (9) early and unanticipated closings of the markets on which the holdings of a Fund trade, resulting in the inability of the Fund to execute intended portfolio transactions.

¹⁴ 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 correlation. A value of zero would mean that there is no correlation between the two variables.

¹⁵ 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").

methodology (the “Methodology”). The Exchange states that this Methodology is a mathematical model based on well-established principles of finance that the Advisor understands are widely used by investment practitioners.

According to the Exchange, the Methodology is designed to determine, for each Fund, the portfolio investments needed to achieve its stated investment objective. The Methodology takes into account a variety of specified criteria and data (the “Inputs”), the most important of which are: (a) net assets (taking into account creations and redemptions) in each Fund’s portfolio at the end of each trading day; (b) the amount of exposure required to the Underlying Index and (c) 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 consists 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. 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. Authorized Participants (“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.

Description of Investment Techniques

As stated, a Fund may invest its assets in Equity Securities, Money Market Instruments, and/or certain Financial Instruments (collectively, the “Portfolio Investments”). The Bullish Funds will hold between 85-100% of their total assets in the Equity Securities contained in the relevant Underlying Index. The remainder of assets, if any, will be devoted to Financial Instruments and Money Market Instruments that are intended to create additional needed exposure to such Underlying Index necessary to pursue the Bullish Funds investment objectives. The Bearish Funds generally will not invest in Equity Securities but rather will hold only Financial Instruments and Money Market Instruments. To the extent, applicable, each Fund will comply with the requirements of the 1940 Act with respect to “cover” for Financial Instruments and thus may hold a significant portion of its assets in liquid instruments in segregated accounts.

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. Each Fund will comply with the requirements of Rule 4.5 of the regulations promulgated by the Commodity Futures Trading Commission (the “CFTC”).¹⁶

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 purchasing such securities. 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) broker-dealers. Each Fund may also invest in Money Market Instruments, in pursuit of its investment objectives, as “cover” for Financial Investments, as described above, or to earn interest.

The Trust will adopt certain fundamental policies consistent with the 1940 Act, and each Fund will be classified as “non-diversified” under the 1940 Act. Each Fund, however, intends to maintain the required level of diversification and otherwise conduct its operations so as to qualify as a “regulated investment company” (“RIC”) for purposes of the Internal Revenue Code

¹⁶ CFTC Rule 4.5 provides an exclusion for investment companies registered under the 1940 Act from the definition of the term “commodity pool operator” upon the filing of a notice of eligibility with the National Futures Association. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

(the “Code”), in order to relieve the Trust and the Funds of any liability for federal income tax to the extent that its earnings are distributed to shareholders.¹⁷

Availability of Information about the Shares and Underlying Indexes

The Trust 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: (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;¹⁸ (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 reported closing price and 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 Product

¹⁷ In order for a Fund to qualify for tax treatment as a RIC, it must meet several requirements under the Code. Among these is the requirement that, at the close of each quarter of the Fund’s taxable year, (i) at least 50% of the market value of the Fund’s total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund’s assets and not greater than 10% of the outstanding voting securities of such issuer, and (ii) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851 (b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or business (other than U.S. government securities or the securities of other regulated investment companies). Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

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 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”).

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.¹⁹

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 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

¹⁹ 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.

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.profund.com and/or the Exchange’s Web site at www.amex.com.²⁰

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

²⁰ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005 (as regarding daily disclosure to the public of the portfolio composition that will be used to calculate the Fund’s NAV later that day).

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.²¹ 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.

For example, the following information would 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): (a) the total value of the Equity Securities held by such Fund (Bullish Fund only); (b) the notional value of the swaps held by the Fund (together with an indication of the index on which such swap is based and whether the Fund's position is long or short); (c) the most recent valuation of the swaps held by the Fund; (d) 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); (e) the number of futures contracts held by the Fund (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); (f) the most recent valuation of the futures contracts held by the Fund; (g) the Fund's total assets and total shares outstanding; and (h) 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

²¹ 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.

end of the business day immediately preceding the publication of the IIV File. To the extent that any Bullish or Bearish Fund holds cash or cash equivalents about which information is not available in a PCF File, 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 Bearish Funds and, together with the information on Equity Securities contained in the PCF, will be sufficient for calculation of IIV for Bullish Funds, during such next business day.²² 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.

Under normal circumstances, the Bearish Funds will be created and redeemed entirely for cash. The IIV File published before the open 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 Bearish Fund for that business day.

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. All NSCC participants (such as Authorized Participants) and the Exchange will 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., Authorized Participants will know the composition of the Fund's portfolio for the next trading day.

²² 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.

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. For example, assuming a Deposit Basket²³ of \$5 million for a Bullish Fund, if the market increases 10%, the Deposit Basket will now be equal to \$5.5 million at 4:00 p.m. The Fund Shares will have increased in value by 20% or \$1 million to equal \$6 million total. With the Deposit Basket valued at \$5.5 million, the Cash Balancing Amount would be \$500,000. The next day's Deposit Basket and Cash Balancing Amount are announced between 5:30 p.m. and 6:00 p.m. each business day.

Creation of the Bullish Funds. Persons²⁴ purchasing Creation Units from a Bullish Fund must make an in-kind deposit of a basket of securities (the "Deposit Securities") consisting of the securities selected by the Advisor from among those securities contained in the Fund's portfolio, together with an amount of cash specified by the Advisor (the "Cash Balancing Amount"), plus the applicable transaction fee (the "Transaction Fee"). The Deposit Securities and the Cash Balancing Amount collectively are referred to as the "Creation Deposit." The Cash Balancing Amount is a cash payment designed to ensure that the value of a Creation Deposit is identical to the value of the Creation Unit it is used to purchase. The Balancing Amount is an

²³ The "Deposit Basket" for the Bullish Funds will, on any given day, be comprised of a basket of Equity Securities, consisting of some or all of the securities in the relevant underlying Index or the equivalent Equity Securities selected by the Advisor (to correspond to the performance of each Index) that APs must deposit with the Trust to form a Creation Unit.

²⁴ 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

amount equal to the difference between the NAV of a Creation Unit and the market value of the Deposit Securities.²⁵ As stated, the Balancing Amount may, at times, represent a significant portion of the aggregate purchase price (or in the case of redemptions, the redemption proceeds) because the mark-to-market value of the Financial Instruments held by the Funds is included in the Balancing Amount. The Transaction Fee is a fee imposed by the Funds on investors purchasing (or redeeming) Creation Units.

As stated above, the Trust will make available through the NSCC or the Distributor on each business day,²⁶ prior to the opening of trading on the Exchange, a list of names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Bullish Fund.²⁷ The Trust also will make available on a daily basis information about the Cash Balancing Amount, calculated shortly after 4:00 p.m. on the prior business day.

The Bullish Funds reserve the right to permit or require a purchasing investor to substitute an amount of cash or a different security to replace any prescribed Deposit Security.²⁸

and other financial institutions, which are exempt from registration as broker-dealers to engage in securities transactions, who are participants in DTC.

²⁵ While not typical, if the market value of the Deposit Securities is greater than the NAV of a Creation Unit, then the Balancing Amount will be a negative number, in which case the Balancing Amount will be paid by the Bullish Fund to the purchaser, rather than vice-versa.

²⁶ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005 (as to NSCC).

²⁷ In accordance with the Advisor's Code of Ethics, personnel of the Advisor with knowledge about the composition of a Creation Deposit will be prohibited from disclosing such information to any other person, except as authorized in the course of their employment, until such information is made public.

²⁸ In certain instances, a Fund may require a purchasing investor to purchase a Creation Unit entirely for cash. For example, on days when a substantial rebalancing of a Fund's portfolio is required, the Advisor might prefer to receive cash rather than in-kind stocks so that it has liquid resources on hand to make the necessary purchases.

Substitution might be permitted or required, for example, because one or more Deposit Securities may be unavailable, or may not be available in the quantity needed to make a Creation Deposit. Brokerage commissions incurred by a Fund to acquire any Deposit Security not part of a Creation Deposit are expected to be immaterial, and in any event the Advisor may adjust the relevant transaction fee to ensure that the Fund collects the extra expense from the purchaser.

Orders to create or redeem Shares of the Bullish Funds must be placed through an AP, which is either (1) a broker-dealer or other participant in the continuous net settlement system of the NSCC or (2) a DTC participant, and which has entered into a participant agreement with the Distributor.²⁹

Redemption of the Bullish Funds. Bullish Fund Shares in Creation Unit-Size

Aggregations will be redeemable on any day on which the New York Stock Exchange (the “NYSE”) is open in exchange for a basket of securities (“Redemption Securities”). As it does for Deposit Securities, the Trust will make available to APs on each business day prior to the opening of trading a list of the names and number of shares of Redemption Securities for each Fund. The Redemption Securities given to redeeming investors in most cases will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day.³⁰

Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the

²⁹ Participants other than broker-dealers that accept orders must have an exemption from broker-dealer registration. Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

³⁰ There may be circumstances, however, where the Deposit and Redemption Securities could differ. For example, if ABC stock were replacing XYZ stock in a Fund’s Underlying Index at the close of today’s trading session, today’s prescribed Deposit

Fund a cash amount equal to the difference. (In the typical situation where the Redemption Securities are the same as the Deposit Securities, this cash amount will be equal to the Balancing Amount described above in the creation process.) The redeeming investor (e.g., an AP) also must pay to the Fund a transaction fee to cover transaction costs.³¹

A Fund has the right to make redemption payments in cash, in kind or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption and the Balancing Amount. The Advisor currently contemplates that Creation Units of each Bullish Fund will be redeemed principally in kind with respect to the Redemption Securities, along with a Balancing Amount in cash largely resulting from the value of the Financial Instruments included in the Fund. Also, a Fund may make redemptions partly or wholly in cash in lieu of transferring one or more Redemption Securities to a redeeming investor if the Fund determines, in its discretion, that such alternative is warranted due to unusual circumstances. This could happen if the redeeming investor is unable, by law or policy, to own a particular Redemption Security.

In order to facilitate delivery of Redemption Securities, each redeeming AP, acting on behalf of such Beneficial Owner or a DTC Participant, must have arrangements with a broker-dealer, bank, or other custody provider in each jurisdiction in which any of the Redemption Securities are customarily traded. If the redeeming AP does not have such arrangements, and it is not otherwise possible to make other arrangements, the Fund may in its discretion redeem the Shares for cash.

Securities might include ABC but not XYZ, while today's prescribed Redemption Securities might include XYZ but not ABC.

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 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.³²

³¹ Redemptions in which cash is substituted for one or more Redemption Securities may be assessed a higher transaction fee to offset the transaction cost to the fund of selling those particular Redemption Securities.

³² 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.

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.

In the case of Creation Unit Aggregations for Bullish Funds, APs will make In-Kind Payments by a deposit with the Trust on the third business day following the date on which the request was made (T+3) of (i) a Deposit Basket and (ii) the appropriate Transaction Fee.³³ In addition, as described above, a Cash Balancing Amount may be required to be paid to the Trust. The Balancing Amount will be paid to the Trust after such Creation Unit Aggregation has been created and the next NAV has been calculated, but by the third business day (T+3) following the creation order request.

In the case of the Creation Unit Aggregations for Bearish Funds, the AP 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). Purchasers of both the Bullish and Bearish Funds in Creation Unit Aggregations must satisfy certain creditworthiness criteria established by the Advisor and approved by the Board, as provided in the Participation Agreement between the Trust and APs.

Subject to the conditions specified in the Application, Creation Unit Aggregations of any Bullish Fund will generally be redeemable on any business day in exchange for an In-Kind Payment, which will be comprised of the Equity Securities contained in the Redemption List (as described above), and the Balancing Amount in effect on the date a request for redemption is made, plus any Transaction Fee. The Trust will transfer the Equity Securities comprising the In-

³³ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on August 2, 2005.

Kind Payment plus any Balancing Amount, if any, owed to the redeeming AP in all cases no later than the third business day (T+3) next following the date on which request for redemption is made.

Creation Unit Aggregations of the Bearish Funds will be redeemable for an All-Cash Payment equal to the NAV less the transaction fee. As with the Bullish Funds, redemptions of Bearish Funds will be cleared and settled will be on a T+3 basis.

The Bullish Fund has the right to make redemption payments in cash (due to unusual circumstances such as when an investor is unable by law or policy to own a Redemption Security), in kind, or a combination of each, provided that the value of its redemption payments equals the NAV of the Shares tendered for redemption.³⁴ The Adviser, however, currently contemplates that Creation Units of the Bullish Funds will be redeemed by a combination of In-Kind Payment and cash, while the Bearish Funds will be redeemed solely in cash. As stated, the Adviser represents that it may adjust the Transaction Fee imposed on a redemption wholly or partly in cash to take into account any additional brokerage or other transaction costs incurred by the Fund.

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

³⁴ In the event an AP has submitted a redemption request in good order and is unable to transfer all or part of a Creation Unit-size aggregation for redemption, a Fund may nonetheless accept the redemption request in reliance on the AP's undertaking to deliver the missing Fund Shares as soon as possible, which undertaking shall be secured by the AP delivery and maintenance of collateral. The Authorized Participant Agreement will permit the Fund to buy the missing Shares at any time and will subject the AP to liability for any shortfall between the cost to the Fund of purchasing the Shares and the value of the collateral.

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 Statement of Additional Information (“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) every 15 seconds throughout the trading day, a calculation of the Indicative Intra-Day Value or “IIV”³⁵ as calculated by a third party calculator (the “IIV Calculator”) currently expected to be the Exchange.³⁶ 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, 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.

³⁵ The IIV is also referred to by other issuers as an “Estimated NAV,” “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.

³⁶ Telephone Conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division, Commission, on July 12, 2005.

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 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.³⁷

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 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.

³⁷ 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).

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 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 (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: (a) the customer's financial status; (b) the customer's tax status; (c) the customer's investment objectives; and (d) 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 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.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Exchange Act³⁸ in general and furthers the objectives of Section 6(b)(5)³⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest..

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

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

³⁸ 15 U.S.C. 78f(b).

³⁹ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Exchange 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].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁰

Jill M. Peterson
Assistant Secretary

⁴⁰ 17 CFR 200.30-3(a)(12).