

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55353; File No. SR-NASDAQ-2007-011)

February 26, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Permit Trading Pursuant to Unlisted Trading Privileges of Shares of 93 Funds of the Proshares Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 21, 2007, The NASDAQ Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposal on an accelerated basis.

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

Nasdaq is proposing to trade shares of the 93 funds identified below (collectively, the “Funds”) of the ProShares Trust (“Trust”) pursuant to unlisted trading privileges (“UTP”).

The text of the proposed rule change is available from Nasdaq’s Web site at nasdaq.complinet.com, at Nasdaq’s principal office, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 III 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade, pursuant to UTP, the Shares of 93 Funds, which are exchange-traded funds (“ETFs”). The Commission has approved exchange rules for the original listing and trading of the Shares on the American Stock Exchange (“Amex”). Nasdaq is submitting this filing because its current generic listing standards for ETFs do not extend to ETFs with the investment objective of corresponding to a specified multiple of the performance, or the inverse performance, of an index that underlies each Fund (each such index is referred to below as an “Underlying Index”), rather than merely mirroring the performance of the index. Systems operated by Nasdaq and its affiliates currently trade on an over-the-counter basis (as facilities of the NASD) those Shares that have already commenced trading on Amex; some of the Shares were approved for listing and trading only recently, and actual trading has not yet commenced. This filing will allow Nasdaq to trade the Shares as an exchange.

Ultra Funds

Certain Funds seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Underlying Indexes ("Ultra Funds"). If such Funds meet their objective, the net asset value (the "NAV")³ of the Shares of each Fund should increase (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. This filing applies to the following Ultra Funds:

4 Ultra Funds listed and traded on Amex pursuant to Commission order on May 10, 2006⁴: (1) Ultra S&P 500, (2) Ultra Nasdaq-100, (3) Ultra Dow 30, and (4) Ultra S&P Mid-Cap 400; and

27 Ultra Funds listed and traded on Amex pursuant to Commission order on January 17, 2007⁵: (1) Ultra Russell 2000, (2) Ultra S&P SmallCap 600, (3) Ultra S&P500/Citigroup Value, (4) Ultra S&P500/Citigroup Growth, (5) Ultra S&P MidCap 400/Citigroup Value, (6) Ultra S&P MidCap 400/Citigroup Growth, (7) Ultra S&P SmallCap 600/Citigroup Value, (8) Ultra S&P SmallCap

³ NAV per Share of each Fund is computed by dividing the value of the net assets of such Fund (*i.e.*, the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of determining NAV.

⁴ Securities Exchange Act Release No. 53784 (May 10, 2006), 71 FR 28721 (May 17, 2006). These Funds were subsequently approved for UTP trading on NYSE Arca. See Securities Exchange Act Release No. 54026 (June 21, 2006), 71 FR 36850 (June 28, 2006).

⁵ Securities Exchange Act Release No. 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007). These Funds were subsequently approved for UTP trading on NYSE Arca. See Securities Exchange Act Release No. 55125 (January 18, 2007), 72 FR 3462 (January 25, 2007).

600/Citigroup Growth, (9) Ultra Basic Materials, (10) Ultra Consumer Goods, (11) Ultra Consumer Services, (12) Ultra Financials, (13) Ultra Health Care, (14) Ultra Industrials, (15) Ultra Oil & Gas, (16) Ultra Real Estate, (17) Ultra Semiconductors, (18) Ultra Technology, (19) Ultra Utilities, (20) Ultra Russell Midcap Index, (21) Ultra Russell Midcap Growth Index, (22) Ultra Russell Midcap Value Index, (23) Ultra Russell 1000 Index, (24) Ultra Russell 1000 Growth Index, (25) Ultra Russell 1000 Value Index, (26) Ultra Russell 2000 Growth Index, and (27) Ultra Russell 2000 Value Index.

Short Funds

Nasdaq also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of the Underlying Indexes ("Short Funds"). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately as much as the respective Index gains when prices in the Index rise on a given day. This filing applies to the following Short Funds:

4 Short Funds listed and traded on Amex pursuant to Commission order on May 10, 2006⁶: (1) Short S&P 500, (2) Short Nasdaq-100, (3) Short Dow 30, and (4) Short S&P Mid-Cap 400; and

27 Short Funds listed and traded on Amex pursuant to Commission order on January 17, 2007⁷: (1) Short Russell 2000, (2) Short S&P SmallCap 600, (3)

⁶ See supra note 4.

Short S&P500/Citigroup Value, (4) Short S&P500/Citigroup Growth, (5) Short S&P MidCap 400/Citigroup Value, (6) Short S&P MidCap 400/Citigroup Growth, (7) Short S&P SmallCap 600/Citigroup Value, (8) Short S&P SmallCap 600/Citigroup Growth, (9) Short Basic Materials, (10) Short Consumer Goods, (11) Short Consumer Services, (12) Short Financials, (13) Short Health Care, (14) Short Industrials, (15) Short Oil & Gas, (16) Short Real Estate, (17) Short Semiconductors, (18) Short Technology, (19) Short Utilities, (20) Short Russell Midcap Index, (21) Short Russell Midcap Growth Index, (22) Short Russell Midcap Value Index, (23) Short Russell 1000 Index, (24) Short Russell 1000 Growth Index, (25) Short Russell 1000 Value Index, (26) Short Russell 2000 Growth Index, and (27) Short Russell 2000 Value Index.

UltraShort Funds

Nasdaq also proposes to trade Shares of certain Funds that seek daily investment results, before fees and expenses, that correspond to twice the inverse (-200%) of the daily performance of the Underlying Indexes ("UltraShort Funds"). If such a Fund is successful in meeting its objective, the NAV of the corresponding Shares should increase approximately twice as much (on a percentage basis) as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when such prices rise on a given day. This filing applies to the following UltraShort Funds:

⁷ See supra note 5.

4 UltraShort Funds listed and traded on Amex pursuant to Commission order on June 23, 2006⁸: (1) UltraShort S&P 500, (2) UltraShort Nasdaq-100, (3) UltraShort Dow 30, and (4) UltraShort S&P Mid-Cap 400; and 27 UltraShort funds listed and traded on Amex pursuant to Commission order on January 17, 2007⁹: (1) UltraShort Russell 2000, (2) UltraShort S&P SmallCap 600, (3) UltraShort S&P500/Citigroup Value, (4) UltraShort S&P500/Citigroup Growth, (5) UltraShort S&P MidCap 400/Citigroup Value, (6) UltraShort S&P MidCap 400/Citigroup Growth, (7) UltraShort S&P SmallCap 600/Citigroup Value, (8) UltraShort S&P SmallCap 600/Citigroup Growth, (9) UltraShort Basic Materials, (10) UltraShort Consumer Goods, (11) UltraShort Consumer Services, (12) UltraShort Financials, (13) UltraShort Health Care, (14) UltraShort Industrials, (15) UltraShort Oil & Gas, (16) UltraShort Real Estate, (17) UltraShort Semiconductors, (18) UltraShort Technology, (19) UltraShort Utilities, (20) UltraShort Russell Midcap Index, (21) UltraShort Russell Midcap Growth Index, (22) UltraShort Russell Midcap Value Index, (23) UltraShort Russell 1000 Index, (24) UltraShort Russell 1000 Growth Index, (25) UltraShort Russell 1000 Value Index, (26) UltraShort Russell 2000 Growth Index, and (27) UltraShort Russell 2000 Value Index.

⁸ Securities Exchange Act Release No. 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006). These Funds were subsequently approved for UTP trading on NYSE Arca. See Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006).

⁹ See supra note 5.

Access to the current portfolio composition of each Fund is currently available through the Trust's Web site (<http://www.proshares.com>).¹⁰ The Underlying Indexes are identified in Amex's proposed rule changes to list the Funds (the "Original Filings").¹¹ The Original Filings state that Amex would disseminate for each Fund on a daily basis by means of Consolidated Tape Association ("CTA") and CQ High Speed Lines information with respect to an Indicative Intra-Day Value ("IIV"), the daily trading volume, closing price, NAV, and final dividend amounts, if any, to be paid for each Fund.¹²

The Original Filings state that the daily closing index value and the percentage change in the daily closing index value for each Underlying Index would be publicly available on various Web sites such as <http://www.bloomberg.com>. The Original Filings further state that data regarding each Underlying Index are also available from the respective index provider to subscribers. According to the Original Filings, several independent data vendors package and disseminate index data in various value-added

¹⁰ The Trust's Web site is publicly accessible at no charge and contains the following information for each Fund's Shares: (1) the prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (2) data for a period covering at least the current and three immediately preceding calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the daily closing price and the closing NAV, and the magnitude of such premiums and discounts; (3) its prospectus and product description; and (4) other quantitative information such as daily trading volume. The prospectus and/or product description for each Fund would inform investors that the Trust's Web site has information about the premiums and discounts at which the Fund's Shares have traded.

¹¹ See supra notes 4, 5 and 8.

¹² The Original Filings explain that, if the IIV is not disseminated as required, Amex would halt trading in the shares of the Funds. If Amex halts trading for this reason, then Nasdaq would do so as well.

formats (including vendors displaying both securities and index levels and vendors displaying index levels only).

The Original Filings state that the value of each Underlying Index is updated intra-day on a real-time basis as its individual component securities change in price, and the intra-day values of each Underlying Index are disseminated at least every 15 seconds throughout Amex's trading day by Amex or another organization authorized by the relevant Underlying Index provider.

To provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, Amex disseminates through the facilities of the CTA: (1) continuously throughout Amex's trading day, the market value of a Share; and (2) at least every 15 seconds throughout Amex's trading day, the IIV as calculated by Amex.

Shares would trade on Nasdaq from 9:30 a.m. ET until 8 p.m. ET, even if the IIV is not disseminated from 4:15 p.m. ET to 8 p.m. ET.¹³ Nasdaq has appropriate rules to facilitate transactions in the Shares during these trading sessions.

Nasdaq will halt trading in the Shares of a Fund under the conditions specified in Nasdaq Rules 4120 and 4121. The conditions for a halt include a regulatory halt by the listing market. UTP trading in the Shares will also be governed by provisions of Nasdaq Rule 4120 relating to temporary interruptions in the calculation or wide dissemination of

¹³ Because NSCC does not disseminate the new basket amount to market participants until approximately 6 p.m. to 7 p.m. ET, an updated IIV is not possible to calculate from 4:15 p.m. to 8 p.m. ET. It is also Nasdaq's understanding that the official index sponsors for the Underlying Indexes currently do not calculate updated index values during those times. However, if the index sponsors calculated an Underlying Index for a Fund during those times in the future, Nasdaq would not trade that Fund during those times unless the official index value were widely disseminated.

the IOPV or the value of the Underlying Index.¹⁴ Additionally, Nasdaq may cease trading the Shares if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, makes further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will also follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, Nasdaq will stop trading the Shares of a Fund if the listing market delists them.

In connection with the trading of the Shares, Nasdaq will inform Nasdaq members in an Information Circular of the special characteristics and risks associated with trading the Shares, as well as the requirements of Nasdaq Rule 2310, which requires Nasdaq members to determine that a particular security is suitable for a customer before recommending a transaction in it. Nasdaq also would require its members to deliver a prospectus or product description to investors purchasing the Shares prior to or concurrently with a transaction in the Shares.

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules applicable to UTP trading of equity securities. Nasdaq believes that its surveillance procedures are adequate to address any concerns about the trading of the Shares on Nasdaq. Trading of the Shares through NASD facilities operated by Nasdaq is currently subject to NASD's surveillance procedures for equity securities in general and ETFs in particular. After Nasdaq begins to trade the Shares as an exchange, NASD, on behalf of Nasdaq, will continue to surveil such trading.

¹⁴ See Securities Exchange Act Release No. 55269 (February 9, 2007), 72 FR 7490 (February 15, 2007) (SR-NASDAQ-2006-050).

Nasdaq's transition to exchange status will not result in any change in the surveillance process with respect to the Shares.¹⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act¹⁶ in general and furthers the objectives of Section 6(b)(5)¹⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, the Exchange believes that the proposal is consistent with Rule 12f-5 under the Act¹⁸ because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposal will promote competition with respect to trading of the Shares by ensuring that Nasdaq can continue to trade the Shares after it begins to operate as an exchange for non-Nasdaq securities.

¹⁵ Surveillance of all trading on NASD facilities operated by Nasdaq, including the trading of Shares, is currently being conducted by NASD. After Nasdaq begins to trade the Shares as an exchange, NASD will continue to surveil trading, pursuant to a regulatory services agreement. Nasdaq is responsible for NASD's performance under this regulatory services agreement.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 17 CFR 240.12f-5.

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

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-011 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-NASDAQ-2007-011. 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 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-NASDAQ-2007-011 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁰ which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Shares.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,²¹ which permits an exchange to trade, pursuant to UTP, a security that is

¹⁹ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78l(f).

listed and registered on another exchange.²² The Commission notes that it previously approved the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP.²³ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁴ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,²⁵ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the

²² Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP." When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²³ See *supra* notes 4-9.

²⁴ 17 CFR 240.12f-5.

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Consolidated Tape Association on a 15-second delayed basis throughout the Exchange's Core Trading Session. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.
2. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin of the special characteristics and risks associated with trading the Shares.
3. Prior to the commencement of trading, the Exchange would inform its members in an Information Bulletin the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction.

This approval order is conditioned on the Exchange's adherence to these representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the Federal Register. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex and the trading of the Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to

revisit those findings or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2007-011), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁷

Florence E. Harmon
Deputy Secretary

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).