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

The Exchanges has neither solicited nor received written comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change immediately operative upon filing. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow specialists to quote more efficiently. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[13]

IV. 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 witht he 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–NYSE–2006–44 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–NYSE–2006–44. 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–NYSE–2006–44 and should be submitted on or before July 19, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–5754 Filed 6–27–06; 8:45 am]

BILLING CODE 8010–01–M

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54026; File No. SR–PCX–2005–115]

Self-Regulatory Organizations; Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.); Notice of Filing of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating and Order Granting Partial Accelerated Approval To Trading Shares of the Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

June 21, 2006.

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 October 11, 2005, the Pacific Exchange, Inc. (n/k/a NYSE Arca, Inc.) (the ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (n/k/a/ NYSE Arca Equities, Inc.) (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.[3] The Exchange filed Amendment No. 1 to the proposed rule change on November 21, 2005.[4] The Exchange filed Amendment No. 2 to the proposed rule change on May 5, 2006.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is partially approving the proposal, as amended, on an accelerated basis.

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

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to trade shares (''Shares'') of the following twelve funds of the ProShares Trust (f/k/a xtraShares Trust) (the ''Trust''): Ultra 500 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 6, 2006, the Pacific Exchange, Inc. (''PXC''), filed with the Commission a proposed rule change, which was effective upon filing, to change the name of the Exchange, as well as several other related entities, to reflect Archipelago's recent acquisition of PCX and the merger of the NYSE with Archipelago. *See* File No. SR–PCX–2006–24. All references herein have been changed to reflect these transactions. Telephone Conference between Lisa Dallmer, Direct, NYSE Arca Equities, Inc., and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, on June 21, 2006.

[4] Amendment No. 1 replaced and superseded the original filing in its entirety.

[5] Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

Fund, Short 500 Fund, Short 100 Fund, Short 30 Fund, Short Mid-Cap 400 Fund, Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund and Ultra Short Mid-Cap 400 Fund (the ''Funds'') pursuant to unlisted trading privileges (''UTP'') and to amend NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts'') to accommodate the trading of the Shares. While the Commission is publishing the Exchange's entire proposal for notice, the Commission is only approving, on an accelerated basis, the portion of the proposal pertaining to the trading, pursuant to UTP, of the Ultra 500 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400 Fund, Short 500 Fund, Short 100 Fund, Short 30 Fund, Short Mid-Cap 400 Fund and the portion of the proposal pertaining to NYSE Arca Equities Rule 9.2(a) because the four remaining funds have not been approved for trading on the primary listing exchange, the American Stock Exchange LLC (''AMEX'').

The text of the proposed rule change appears below. Additions are in *italic.*

* * * * *

Rules of NYSE Arca Equities, Inc.

Rule 9

Conducting Business With The Public

Rule 9.2(a).

Diligence As To Accounts

(*1*) Every ETP Holder, through a general partner, a principal executive officer or a designated authorized person, shall use due diligence to learn the essential facts relative to every customer, every order, every account accepted or carried by such ETP Holder and every person holding power of attorney over any account accepted or carried by such ETP Holder.

(2) In recommending to a customer the purchase, sale or exchange of any security, an ETP Holder shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of any facts disclosed by the customer as to his other security holdings, financial situation and needs. Prior to the execution of a transaction recommended to a non-institutional customer (defined below), other than transactions with customers where investments are limited to money market mutual funds, an ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

(3) For purposes of this Rule, the term ''non-institutional customers'' shall mean a customer that does not qualify as an ''institutional account.'' The term ''institutional account'' means the account of a bank, savings and loan association, insurance company, registered investment company, investment adviser registered either with the Securities and Exchange Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions), or any other natural person or entity with total assets of at least $50 million.

* * * * *

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. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

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

I. Purpose

Under NYSE Area Equities Rule 5.2(j)(3), the Exchange may propose to list and/or trade pursuant to UTP ''Investment Company Shares.'' [6] With this filing, the Exchange proposes to trade pursuant to UTP the Shares of the Funds under NYSE Arca Equities Rule 5.2(j)(3). The Exchange represents that the Shares, which seek to provide investment results that exceed the daily performance of a specified stock index by a specified percentage or that seek to provide investment results that correspond to the inverse or opposite of the index's daily performance or twice the inverse or opposite (−200%) of the index's daily performance, qualify as Investment Company shares as defined in NYSE Arca Equities Rule 5.2(j)(3).[7] To accommodate the trading of the Shares, the Exchange is proposing to amend NYSE Arca Equities Rule 9.2(a) (''Diligence as to Accounts''), as more fully described below under the heading ''Information Bulletin.'' The Commission previously approved the original listing and trading of the Shares of eight of the Funds on the American Stock Exchange LLC (''Amex'').[8] A proposal to list and trade the Shares of the remaining four Funds has been filed with the Commission by Amex, but has not yet been approved by the Commission.[9]

Four of the Funds—the Ultra 500, Ultra 100, Ultra 30, and Ultra Mid-Cap 400 Funds (the ''Bullish Funds'')—seek daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Standard & Poor's 500® Index (''S&P 500''), the Nasdaq-100® Index (''Nasdaq 100''), the Dow Jones Industrial Average℠ (''DJIA''), and the S&P MidCap400™ Index (''S&P Midcap''), respectively. Each such index is referred to herein individually as an ''Underlying Index'' or ''Index'' and collectively as ''Underlying Indexes,''[10]Each of these Funds if successful in meeting its objective, should gain, on a percentage basis,

[6] In October 1999, the Commission approved NYSE Arca Equities Rule 5.2(j)(3), which sets forth the rules related to listing and trading criteria for Investment Company Shares. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–1998–29). In July 2001, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to UTP, of Investment Company Shares under NYSE Arca Equities Rule 5.2(j)(3). *See* Securities Exchange Act Release No. 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14). The definition of an Investment Company Unit is set forth in NYSE Arca Equities Rule 5.1(b)(15), which provides that an Investment Company Unit is a security representing an interest in a registered investment company that could be organized as a unit investment trust, an open-end management investment company or a similar entity.

[7] NYSE Arca Equities Rule 5.2(j)(3)(A)(i)(a) allows the listing and trading of Investment Company Shares issued by a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio or securities. The Exchange represents that the Shares qualify under NYSE Arca Equities Rule 5.2(j)(3) because the Shares are being registered under the Investment Company Act of 1940 (the ''1940 Act'') and are ''otherwise based on'' an index.

[8] *See* Securities Exchange Act Release No. 34–52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR–SMEX–2004–62) (the ''Amex Order'') (approving the listing and trading on Amex of the following eight Funds: Ultra 500 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400 Fund ; Short 500 Fund, Short 100 Fund, Ultra 100 Fund, Ultra 100 Fund, Ultra 30 Fund, Ultra Mid-Cap 400 Fund; Short 500 Fund, Short 100 Fund, Short 30 Fund and Short Mid-Cap 400 Fund). *See also* Securities Exchange Act Release No. 52197 (August 2, 2005), 70 FR 46228 August 9, 2005) (SR–AMEX–2004–62) (the ''Amex Notice'').

[9] *See* SR–AMEX–2006–41 (April 28, 2006) (the ''Amex Proposal'') (seeking accelerated approval to list and trade on Amex the Ultra Short 500 Fund, Ultra Short 100 Fund, Ultra Short 30 Fund and Ultra short Mid-Cap 400 Fund).

[10] Exchange-traded funds based on the Underlying Indexes are traded on the NYSE Arca Marketplace. The Statement of Additional Information (''SAI'') for the Funds discloses that each Fund reserves the right to substitute a different Underlying Index under certain circumstances. In the event a Fund substitutes a different index, the Exchange will file a new Rule 19b–4 filing with the Commission if the listing market does so.

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 Funds— the Short 500, Short 100, Short 30, and Short Mid-Cap 400 Funds (the ''Initial 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. If each of these Funds is successful in meeting its objective, the net asset value (the ''NAV'') [11] of shares of each Fund should increase approximately as much, on a percentage basis, as the respective Underlying Index decreases when the prices of the securities in the Index decline on a given day; or should decrease approximately as much, on a percentage basis, as the respective Index gains when the prices of the securities in the index rise on a given day.

The remaining four Funds—the Ultra Short 500, Ultra Short 100, Ultra Short 30, and Ultra Short Mid-Cap 400 Funds (the ''Additional Bearish Funds'')—seek daily investment results, before fees and expenses, that correspond to twice (or two times) the inverse or opposite (−200%) of the daily performance of the S&P 500, Nasdaq 100, DJIA and S&P MidCap, respectively. If each of these Funds is successful in meeting its objective, the net asset value (the ''NAV'') of the Shares of each Fund should increase approximately twice as much, on a percentage basis, as the respective Underlying Index loses when the prices of the securities in the Index decline on a given day, or should decrease approximately twice as much as the respective Underlying Index gains when the prices of the securities in the Index rise on a given day. The ''Initial Bearish Funds'' and the ''Additional Bearish Funds'' are referred to herein collectively as the ''Bearish Funds.''

The Shares represent beneficial ownership interests in the net assets of the Funds, less expenses. The Bullish Funds generally will hold at least 85% of their assets in the component equity securities (''Equity Securities'') of the relevant Underlying Index. The remainder of assets will be devoted to Financial Instruments (as defined below) that are intended to create the additional needed exposure to such Underlying Index necessary to pursue the Fund's investment objective. The Bearish Funds will not invest directly in the component securities of the relevant Underlying Index, but instead, will create short exposure to such Index. Normally 100% of the value of the portfolios of each Bearish Fund will be devoted to Financial Instruments (defined below) and money market instruments, including U.S. government securities and repurchase agreements (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. ProShare Advisors LLC is the investment adviser (the ''Advisor'') to each Fund.

(a) The Shares. A description of the Trust, the operation of the Funds and the creation and redemption process for the Shares is set forth in the Amex Notice, the Amex Order and the Amex Proposal. To summarize, issuances of Shares will be made only in aggregations of at least 50,000 Shares or multiples thereof (''Creation Shares'' or ''Creation Unit Aggregations''). The Funds will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'') with the Distributor.

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

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.[12]

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. The NAV of each Fund is calculated by the accounting agent for the Fund and determined each business day at the close of regular trading of the NYSE (ordinarily 4:00 p.m. New York time). More information regarding the calculation of the NAV is set forth in the Amex Order.

(b) Dissemination of Information About the Shares and the Underlying Indexes. The Trust's or Advisor's Web site, which is and will be publicly accessible at no charge (and to which the Exchange ill provide a hyperlink on its Web site), will contain the following information for each Fund's Shares: (i) The prior business day's closing NAV, the reported closing price, and a calculation of the premium or discount of such price in relation to the closing NAV; (ii) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's Shares traded at a premium or discount to NAV based on the reported closing price and NAV, and the magnitude of such premiums and discounts; (iii) its Prospectus and Product Description; and (iv) other quantitative information such as daily trading volume.

According to the Amex Order, 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 in Indicative Intra-Day Value (the ''IIV'') (discussed below),

[11] The NAV of each Fund is calculated and determined each business day at the close of regular trading at the Amex, typically 4 p.m. eastern time (''ET'').

[12] According to the Amex Order, in their 1940 Act Application, the Applicants stated that they do not believe that All-Cash Payments will affect arbitrage efficiency. This is because the 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 state 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.

recent NAV, shares outstanding, estimated cash amount, and total cash amount per Creation Unit. The Amex will make available on its Web site (*http://www.amex.com*) 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 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 (*http://www.profunds.com*). The Trust expects that Web site disclosure of portfolio holdings will be made daily and will include, as applicable, the names and number of shares held of each specific Equity Security, the specific types of Financial Instruments and characteristics of such instruments, cash equivalents and amount of cash held in the portfolio of each Fund. This public Web site disclosure of the portfolio composition of each Fund will coincide with the disclosure by the Advisor of the ''IIV File'' and the ''PCF File''.[13] 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 authorized Participants. 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, whereas the IIV and PCF Files will similarly provide the portfolio holdings but in a format appropriate for Authorized Participants, *i.e.,* the exact components of a Creation Unit. Accordingly, all investors will have access to the current portfolio composition of each Fund through the Trust Web site at *http://www.profunds.com.*

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., http://www.bloomberg.com.* Data regarding each Underlying Index is also available from the respective index provider to subscribers. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both securities and index levels and vendors displaying index levels only). The value of each Underlying Index will be updated intra-day on a real time basis as its individual component securities change in price. According to the Amex Order, 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.

In order to provide updated information relating to each Fund for use by investors, professionals, and persons wishing to create or redeem Shares, the Amex will disseminate through the facilities of the CTA from 9:30 a.m. ET to 4:15 p.m. ET: (i) continuously, the market value of a share; and (ii) every 15 seconds, a calculation of the IIV as calculated by a third-party calculator (the ''IIV Calculator'') currently expected to be Amex, according to the Amex Order. 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. Information regarding the calculation methodology for the IIV for the Bullish Funds and the Bearish Funds is set forth in the Amex Order.

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 should not be viewed as a real time update of the NAV of a particular Fund which is calculated only once a day.

(c) *UTP Trading Criteria.* The Exchange represents that it will cease trading the Shares of a Fund during the listing market's trading hours if: (a) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 or a halt because the IIV or the value of the applicable Underlying Index is no longer available; or (b) the listing market delists the shares. Additionally, the Exchange may cease trading the Shares of a Fund if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

(d) Trading Rules. The Exchange 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. Shares will trade on the NYSE Arca Marketplace from 9:30 a.m. ET until 8 p.m. ET, even if the IIV is not disseminated from 4:14 p.m. ET to 8 p.m. ET.[14] The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of a Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising a 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. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's

[13] According the Amex Order, at the end of each business day, the Trust will create a portfolio composition file (''PCF'') for each Fund, which it will transmit via JPMorgan Chase Bank (the ''Index Receipt Agent'') to the National Securities Clearing Corporation (''NSCC'') before the open of business the next business day. 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 Fund's holdings of Financial Instruments. 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. The information in the PCF File and the IIV File will be available to all participants in the NSCC system.

[14] Because NSCC does not disseminate the new basket amount to market participant until approximately 6 p.m. to 7 p.m. ET, an updated IIV is not possible to calculate during the Exchange's late trading session. The Exchange also states that currently the official index sponsors for the Funds' indexes do not calculate updated index values during the Exchange's late trading session; however, if the index sponsors did so in the future, the Exchange will not trade this product unless such official index value is widely disseminated. Telephone Conference between Lisa Dallmer, Director, NYSE Arca Equities, Inc., and Florence E. Harmon, Senior Special Counsel, Division, Commission, on June 21, 2006.

''circuit breaker'' rule[15] or by the halt or suspension of trading of the underlying securities.[16]

Shares will be deemed ''Eligible Listed Securities,'' as defined in NYSE Arca Equities Rule 7.55, for purposes of the Intermarket Trading System (''ITS'') Plan and therefore will be subject to the trade through provisions of NYSE Arca Equities Rule 7.56, which require that ETP Holders avoid initiating trade-throughs for ITS securities.

(e) Surveillance. The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to monitor Exchange trading of the Shares.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange is able to obtain information regarding trading in the Shares and the securities comprising the Underlying Indexes through ETP Holders in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

(f) Information Bulletin. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), as amended herein and more fully described below, which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the IIV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information. Specifically, the proposed amendment to NYSE Arca Equities Rule 9.2(a), which will be discussed in the Information Bulletin as noted above, provides that ETP Holders, before recommending a transaction in the Shares, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the proposed rule amendment provides that prior to the execution of a transaction recommended to a non-institutional customer, ETP Holders should make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives and any other information that they believe would be useful to make a recommendation.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds.[17] The Exchange notes that investors purchasing Shares directly from the Trust will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also disclose that the NAV for the Shares will be calculated shortly after 4 p.m. ET each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5),[19] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, 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 Act[20] because it deems the Shares to be equity securities, thus rendering the Shares subject to the Exchange'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 impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change 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, as amended, 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–PCX–2005–115 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–PCX–2005–115. 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

[15] *See* NYSE Arca Equities Rule 7.12.

[16] *See* ''UTP Trading Criteria'' above for specific instances when the Exchange will cease trading the Shares.

[17] According to the Amex Order, their 1940 Act Application included a request that the exemptive order also grant 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. Any Product Description used in reliance on Section 24(d) exemptive relief will comply with all representations and conditions set forth in the order.

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78s(b)(5).

[20] 17 CFR 240.12f–5.

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–PCX–2005–115 and should be submitted on or before July 19, 2006.

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

The Commission is approving the portion of the proposed rule change, as amended, pertaining to the trading pursuant to UTP of eight Funds: Ultra 500 Fund, Ultra 100 Fund Ultra 30 Fund, Ultra Mid-Cap 400 Fund, Short 500 Fund, Short 100 Fund, Short 30 Fund, and Short Mid-Cap 400 Fund (''Original Funds''). The Commission is also approving the Exchange's Rule 9.2(a) with respect to ''Diligence to Accounts.'' With regard to the trading pursuant to UTP of the Original Funds and the implementation of Rule 9.2(a) ''Diligence to Accounts,'' the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the portion of the proposed rule change pertaining to the Original Funds and Rule 9.2(a) is consistent with Section 6(b)(5) of the Act,[22] 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.

In addition, the Commission finds that the portion of the proposal pertaining to the trading the Original Funds is consistent with Section 12(f) of the Act,[23] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[24] The Commission notes that it previously approved the listing and trading of the Shares of the Original Funds on the Amex.[25] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[26] 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. NYSEArca rules deem the Shares to be equity securities, thus trading in the Shares will be 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,[27] which sets forth Congress's 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.

In connection with the Exchange's UTP of the Shares, of the Original Funds, the Exchange will cease trading in the Shares if: (1) the listing market stops trading the Shares because of a regulatory halt similar to NYSE Arca Equities Rule 7.12 or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available, or (b) the listing market delists the Shares. Additionally, the Exchange may cease trading the Shares if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In support of the portion of the proposed rule change regarding UTP of the Shares, of the Original Funds, the Exchange has made the following representations:

1. The Exchange has appropriate rules to facilitate transactions in this type of security in all trading sessions.

2. The Exchange's surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange.

3. The Exchange will distribute an Information Bulletin to its members prior to the commencement of trading of the Shares on the Exchange that explains the special characteristics and risks of trading the Shares.

4. The Exchange will require a member with a customer who purchases newly issued Shares on the Exchange to provide that customer with a product prospectus and will note this prospectus delivery requirement in the Information Bulletin.

5. The Exchange will cease trading in the Shares if (1) the listing market stops trading the Shares because of a regulatory halt similar to a halt based on NYSE Arca Equities Rule 7.12 and/or a halt because the Indicative Partnership Value or the value of the applicable Underlying Index is no longer available, or (2) the listing market delists the Shares.

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

The Commission finds good cause for partially approving this proposed rule change with regard to the UTP of the Original Funds and Rule 9.2(a) ''Diligence to Accounts'' 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 these Shares on the amex is consistent with the Act.[28] The Commission presently is not aware of any issue that would cause it to revisit that earlier finding or preclude the trading of these funds on the Exchange pursuant to UTP. Rule 9.2(a) ''Diligence as to Accounts'' is substantially similar to the suitability standards previously approved for other self-regulatory organizations. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for these Shares and suitability standards that will enhance investor protection.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–PCX–2005–115), as amended, is hereby approved on an accelerated basis.[29]

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

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78*l*(f).

[24] Section 12(a) of the Act, 15 U.S.C. 781(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.

[25] *See* Amex Order and Amex Notice, *supra* note 8.

[26] 17 CFR 240.12f–5.

[27] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[28] *See* Amex Order and Amex Notice, *supra* note 8.

[29] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 06–5729 Filed 6–27–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54025; File No. SR–NYSEArca–2006–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Relating to iShares® GSCI Commodity-Indexed Trust

June 21, 2006.

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 April 26, 2006, NYSE Arca, Inc. (the ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or the ''Corporation''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 19, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

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

The Exchange, through its wholly owned subsidiary NYSE Arca Equities, proposes to amend its rules governing NYSE Arca, LLC (also referred to as the ''NYSE Arca Marketplace''), the equities trading facility of NYSE Arca Equities. The Exchange proposes new NYSE Arca Equities Rule 8.203 in order to permit trading, either by listing or pursuant to unlisted trading privileges (''UTP''), shares issued by a trust that is a commodity pool that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool that, in turn, holds such long positions (''Commodity Index Trust Shares'') and trading, pursuant to UTP, shares (''Shares'') of the iShares® GSCI® Commodity-Indexed Trust (the ''Trust'').[4]

The text of the proposed rule change appears below. All text is new.

* * * * *

Rules of NYSE Arca Equities, Inc.

Rule 8.203

Commodity Index Trust Shares

(a) The Corporation will consider for trading, whether by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares that meet the criteria of this Rule.

(b) Applicability. This Rule is applicable only to Commodity Index Trust Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the provisions of the trust issued receipts rules, Bylaws, and all other rules and procedures of the Board of Directors shall be applicable to the trading on the Corporation of such securities. Commodity Index Trust Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Bylaws and Rules of the Corporation.

(c) Commodity Index Trust Shares. The term ''Commodity Index Trust Shares'' as used in the Rules shall, unless the context otherwise requires, mean a security that (a) is issued by a trust (''Trust'') that (i) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (ii) that holds long positions in futures contracts on a specified commodity index, or interests in a commodity pool which, in turn, holds such long positions; (b) when aggregated in some specified minimum number may be surrendered to the Trust by the beneficial owner to receive positions in futures contracts on a specified index and cash or short term securities. The term ''futures contract'' is commonly known as a ''contract of sale of a commodity for future delivery'' set forth in Section 2(a) of the Commodity Exchange Act.

(d) Designation. The Corporation may trade, either by listing or pursuant to unlisted trading privileges, Commodity Index Trust Shares based on one or more securities. The Commodity Index Trust Shares based on particular securities shall be designated as a separate series and shall be identified by a unique symbol.

(e) Initial and Continued Listing. Commodity Index Trust Shares will be listed and traded on the Corporation subject to application of the following criteria:

(1) Initial Listing—the Corporation will establish a minimum number of Commodity Index Trust Shares required to be outstanding at the time of commencement of trading on the Corporation.

(2) Continued Listing—the Corporation will consider the suspension of trading in or removal from listing of a series of Commodity Index Trust Shares under any of the following circumstances:

(i) following the initial twelve-month period beginning upon the commencement of trading of the Commodity Index Trust Shares, there are fewer than 50 record and/or beneficial holders of Commodity Index Trust Shares for 30 or more consecutive trading days;

(ii) if the value of the applicable underlying index is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the sponsor, the Trust or the trustee of the Trust; or

(iii) if the net asset value for the trust is no longer disseminated to all market participants at the same time;

(vi) if the Indicative Trust Value is no longer made available on at least a 15-second delayed basis; or

(v) if such other event shall occur or condition exists which in the opinion of the Corporation makes further dealings on the Corporation inadvisable.

Upon termination of a Trust, the Corporation requires that Commodity Index Trust Shares issued in connection with such entity Trust be removed from Corporation listing. A Trust may terminate in accordance with the provisions of the Trust prospectus, which may provide for termination if the value of the Trust falls below a specified amount.

(3) Term—The stated term of the Trust shall be as stated in the Trust prospectus. However, a Trust may be terminated under such earlier circumstances as may be specified in the Trust prospectus.

(4) Trustee—The following requirements apply:

(i) The trustee of a Trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 made changes to the proposed rule text, as well as to corresponding sections of the Purpose section. Amendment No. 1 also made other clarifying changes to the Purpose section.

[4] iShares® is a registered trademark of Barclays Global Investors, N.A. GSCI is a registered trademark of Goldman, Sachs & Co.