

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56650; File No. SR-Amex-2007-35)

October 12, 2007

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Criteria for Securities that Underlie Options Traded on the Exchange

I. Introduction

On April 5, 2007, the American Stock Exchange LLC (“Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend certain rules to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (“Multiple Fund Shares”) and Index Inverse Exchange Traded Fund Shares (“Inverse Fund Shares”) (collectively, the “Fund Shares”). On August 20, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on September 6, 2007.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change as modified by Amendment No. 1.

II. Description of the Proposal

The purpose of the proposed rule change is to revise Amex Rules 915 and 916 to enable the listing and trading on the Exchange of options on Multiple Fund Shares⁵ and Inverse Fund

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 superseded and replaced the original filing in its entirety.

⁴ See Securities Exchange Act Release No. 56336 (August 29, 2007), 72 FR 51281.

⁵ Multiple Fund Shares seek to provide investment results, before fees and expenses, that

Shares.⁶ Multiple and Index Fund Shares differ from traditional exchange-traded fund (“ETFs”) shares in that they do not merely correspond to the performance of a given index, but rather attempt to match a multiple or inverse of such underlying index performance. Current Multiple Fund Shares trading on the Exchange include the ProShares Ultra Funds and Index Inverse Fund Shares trading on the Exchange include the Short Funds and UltraShort Funds.⁷

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Multiple Fund Shares or Inverse Fund Shares may hold a combination of financial instruments, including, among other things, stock index futures contracts; options on futures; options on securities and indices; equity caps, collars and floors; swap agreements; forward contracts; repurchase agreements; and reverse repurchase agreements (the “Financial Instruments”). The underlying portfolios of Multiple Fund Shares generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets are devoted to Financial Instruments that are intended to create the additional needed exposure to such Underlying Index necessary to pursue its investment

correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index.

⁶ Inverse Fund Shares seek to provide investment results, before fees and expenses, that correspond to the inverse (opposite) of the percentage performance on a given day of a particular foreign or domestic stock index by a specified multiple.

⁷ See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of the Ultra Funds and Short Funds) and 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex-2006-41) (approving the listing and trading of the UltraShort Funds). The Ultra Funds are expected to gain, on a percentage basis, approximately twice (200%) as much as the underlying benchmark index and should lose approximately twice (200%) as much as the underlying benchmark index when such prices decline. The Short Funds are expected to achieve investment results, before fees and expenses, that correspond to the inverse or opposite of the daily performance (-100%) of an underlying benchmark index. Lastly, the UltraShort Funds are expected to achieve investment results, before fees and expenses that correspond to twice the inverse or opposite of the daily performance (-200%) of the underlying benchmark index.

objective. Normally, 100% of the value of the underlying portfolios of Inverse Fund Shares will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the “Money Market Instruments”).

Currently, Commentary .06 to Amex Rule 915 provides securities deemed appropriate for options trading shall include shares or other securities (“Exchange-Traded Fund Shares”) that are principally traded on a national securities exchange or through the facilities of a national securities association and defined as an “NMS stock” under Rule 600 of Regulation NMS, and that (i) represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities; (ii) represent interest in a trust or other similar entity that holds a specified non-U.S. currency and/or currencies deposited with the trust or similar entity when aggregated in some specified minimum number may be surrendered to the trust by the beneficial owner to receive the specified non-U.S. currency and/or currencies and pays the beneficial owner interest and other distributions on the deposited non-U.S. currency and/or currencies, if any, declared and paid by the trust; or (iii) represent commodity pool interests principally engaged, directly or indirectly, in holding and/or managing portfolios or baskets of securities, commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities and/or non-U.S. currency (“Commodity Pool ETFs”).

The Exchange proposes to amend Commentary .06 to Amex Rule 915 to expand the type of options to include the listing and trading of options based on Multiple Fund Shares and Inverse Fund Shares⁸ that may hold or invest in any combination of securities, Financial

⁸ See Amex Rule 1000A—AEMI(b)(2).

Instruments and/or Money Market Instruments. Multiple Fund Shares and Inverse Fund Shares will continue to otherwise satisfy the listing standards in Commentary .06 to Amex Rule 915. In addition, the Exchange proposes to remove the reference to a “national securities association” in Commentary .06 to Amex Rule 915.

As set forth in proposed amended Commentary .06 to Amex Rule 915, Multiple Fund Shares and Inverse Fund Shares must be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS. In addition, Multiple Fund Shares and Inverse Fund Shares must meet either: (i) the criteria and guidelines under Commentary .01 to Amex Rule 915; or (ii) be available for creation or redemption each business day in cash or in kind from the investment company at a price related to net asset value. In addition, the investment company shall provide that shares may be created even though some or all of the securities and/or cash (in lieu of the Financial Instruments) needed to be deposited have not been received by the investment company, provided the authorized creation participant has undertaken to deliver the shares and/or cash as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the fund which underlies the option as described in the prospectus.

The current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply.

The Exchange proposes to amend Commentary .07 to Amex Rule 916 to indicate that the index or portfolio may consist of securities, Financial Instruments and/or Money Market Instruments. The Exchange also seeks to delete references to “national market securities,” “national securities association”, and “national market association” set forth in Commentary .07 to Amex Rule 916.

Under the applicable continued listing criteria in Commentary .07 to Amex Rule 916, options on Fund Shares may be subject to the suspension of opening transactions as follows: (1) following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares, there are fewer than 50 record and/or beneficial holders of the Fund Shares for 30 or more consecutive trading days; (2) the value of the index, non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities and/or Financial Instruments on which the Fund Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Fund Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Multiple Fund Shares or Inverse Fund Shares, if the Shares are halted from trading on their primary market or if the Shares are delisted in accordance with the terms of Amex Rule 916 or the value of the index or portfolio on which the Shares are based is no longer calculated or available.

The Exchange represents that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under Commentary .06 to Amex Rule 915 will not have any effect on the rules pertaining to position and exercise limits⁹ or margin.¹⁰

In addition, the Exchange also seeks to add “reverse repurchase agreements” within the rule text of Amex Rule 1000A—AEMI(b)(2)(ii) in order to correct the definition of Financial Instruments.

The Exchange has represented that its existing surveillance procedures applicable to

⁹ See Amex Rules 904 and 905.

¹⁰ See Amex Rule 462.

trading in options are adequate to properly monitor the trading in Multiple Fund Shares options and Inverse Fund Shares options.

III. Discussion

After careful consideration, 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,¹¹ and in particular, the requirements of Section 6(b) of the Act.¹² Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

Surveillance

The Commission notes that the Exchange has represented that its existing surveillance procedures applicable to trading options are adequate to properly monitor trading in Multiple Fund Shares options and Inverse Fund Shares options. In addition, the Exchange represented that the expansion of the types of investments that may be held by Multiple Fund Shares or Inverse Fund Shares under Commentary .06 to Amex Rule 915 will not have any effect on the

¹¹ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

rules pertaining to position and exercise limits¹⁴ or margin.¹⁵

Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing or maintenance listing standards for options on Exchange Traded Fund Shares will continue to apply. These provisions include requirements regarding initial and continued listing standards, suspension of opening transactions, and trading halts. Proposed amended Commentary .06 to Amex Rule 915, would require that Multiple Fund Shares and Inverse Fund Shares be traded on a national securities exchange and must be an “NMS stock” as defined under Rule 600 of Regulation NMS.¹⁶

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on the shares of the Ultra Fund, Short Fund and UltraShort Fund of the ProShares Trust. The Commission believes that the ability to trade options on the Multiple and Inverse Fund Shares will provide investors with additional risk management tools. The Commission further believes that the proposed amendment to the Exchange’s listing criteria for options on Exchange Traded Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Multiple Fund Shares or Inverse Fund Shares that may be introduced in the future, thereby affording investors greater investment choices.

¹⁴ See Amex Rules 904 and 905.

¹⁵ See Amex Rule 462.

¹⁶ 17 CFR 242.600(b)(47).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-Amex-2007-35), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).