

Contact person for more information: Michelle Schroll, (301) 415-1662.

The NRC Commission Meeting Schedule can be found on the Internet at: <http://www.nrc.gov/what-we-do/policy-making/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability program Coordinator, Deborah Chan, at 301-415-7041, TDD: 301-415-2100, or by e-mail at [DLC@nrc.gov](mailto:DLC@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301-415-1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to [dkw@nrc.gov](mailto:dkw@nrc.gov).

Dated: May 18, 2006.

**R. Michelle Schroll,**

*Office of the Secretary.*

[FR Doc. 06-4853 Filed 5-22-06; 10:07 am]

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## OFFICE OF MANAGEMENT AND BUDGET

### Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) invites the general public and Federal agencies to comment on the renewal without change of three (3) standard forms: The SF-270, Request for Advance or Reimbursement; SF-271, Outlay and Request for Reimbursement for Construction Programs; and SF-LLL, Disclosure of Lobbying Activities.

**DATES:** Comments must be submitted on or before July 24, 2006. Late comments will be considered to the extent practicable.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail

sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic mail comments may be submitted to: [ephillip@omb.eop.gov](mailto:ephillip@omb.eop.gov). Please include "Grant Forms" in the subject line and the full body of your comments in the text of the electronic message (and as an attachment if you wish). Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202-395-3952. Comments may be mailed to Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3993. The standard forms can be downloaded from the OMB Grants Management home page (<http://www.whitehouse.gov/omb/grants>).

OMB Control No.: 0348-0004.

Title: Request for Advance or Reimbursement.

Form No.: SF-270.

Type of Review: Extension of a currently approved collection.

Respondents: States, local governments, universities, non-profit organizations.

Number of Responses: 100,000.

Estimated Time per Response: 60 minutes.

Needs and Uses: The SF-270 is used to request funds for all nonconstruction grant programs when letters of credit or predetermined advance payment methods are not used. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348-0002.

Title: Outlay and Request for Reimbursement for Construction Programs.

Form No.: SF-271.

Type of Review: Extension of a currently approved collection.

Respondents: States, local governments, universities, non-profit organizations.

Number of Responses: 40,000.

Estimated Time per Response: 60 minutes.

Needs and Uses: The SF-271 is used to request reimbursement for all

construction grant programs. The Federal awarding agencies use information reported on this form for the award and general management of Federal assistance program awards.

OMB Control No.: 0348-0046.

Title: Disclosure of Lobbying Activities.

Form No.: SF-LLL.

Type of Review: Extension of a currently approved collection.

Respondents: Contractors, states, local governments, universities, non-profit organizations, for-profit organizations, individuals.

Number of Responses: 1,000.

Estimated Time per Response: 10 minutes.

Needs and Uses: The SF-LLL is the standard disclosure form for lobbying paid for with non-Federal funds, as required by the Byrd Amendment and amended by the Lobbying Disclosure Act of 1995. The Federal awarding agencies use information reported on this form for the award and general management of Federal contracts and assistance program awards.

Office of Management and Budget.

**Gil Tran,**

*Acting Chief, Financial Standards and Grants Branch.*

[FR Doc. 06-4809 Filed 5-23-06; 8:45 am]

BILLING CODE 3110-01-M

## SECURITIES AND EXCHANGE COMMISSION

Release No. IC-27323; 812-12354]

### ProShares Trust, et al.; Notice of Application

May 18, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

**Applicants:** ProShares Trust ("Trust"), ProShare Advisors LLC ("ProShare Advisors"), and SEI Investments Distribution Company ("Distributor").

**Summary of Application:** Applicants request an order that would permit: (a) Series of an open-end management investment company to issue shares of limited redeemability; (b) secondary market transactions in the shares of the

series to occur at negotiated prices on the American Stock Exchange LLC ("Amex"), or another national securities exchange as defined in section 2(a)(26) of the Act, or on The NASDAQ Stock Market LLC (each, an "Exchange"); (c) dealers to sell shares of the series of the Trust to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933 (the "Securities Act"); and (d) affiliated persons of a series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

**Filing Dates:** The application was filed on December 5, 2000, and amended on January 7, 2005, June 22, 2005, July 6, 2005, and March 29, 2006.

**Hearing or Notification of Hearing:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 12, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090. Applicants: ProShares Trust and ProShare Advisors, 7501 Wisconsin Avenue, Suite 1000, Bethesda, MD 20814; SEI Investments Distribution Company, One Freedom Valley Drive, Oaks, PA 19456.

**FOR FURTHER INFORMATION CONTACT:** John Yoder, Senior Counsel, at (202) 551-6878, Julia Kim Gilmer, Branch Chief, at (202) 551-6871, or Michael W. Mundt, Senior Special Counsel, at (202) 551-6820 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549-0102 (tel. 202-551-5850).

### Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Delaware statutory trust. The Trust intends to offer multiple series (each series, a "Fund") with different types of investment objectives as further described below. ProShare Advisors is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). Each Fund will be advised by ProShare Advisors or an entity controlled by or under common control with ProShare Advisors (each, an "Adviser"). The Adviser may enter into subadvisory agreements with additional investment advisers to act as subadviser to the Trust and any of its series. Any subadviser to the Trust or a Fund will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will act as the distributor and principal underwriter for each Fund's shares ("ETS").

2. The Funds will seek daily investment results, before fees and expenses, that: (a) Correspond to the return of various equity securities indices ("Conventional Funds"); (b) provide 125%, 150% or 200% of the return of equity securities indices ("Leveraged Funds"); or (c) move in the opposite direction of the performance of equity securities indices in multiples of 100%, 125%, 150% or 200% ("Inverse Funds"). Of the twelve initial Funds, four will be Leveraged Funds and eight will be Inverse Funds.<sup>1</sup>

<sup>1</sup> The Leveraged Funds will seek to return 200% of the return of the S&P 500 Index, the Nasdaq100 Index, the Dow Jones Industrial Average and the S&P MidCap400 Index. The Inverse Funds will seek to return the inverse, or 200% of the inverse, of the same indices. The Trust may offer additional Funds based on these indices and the following indices (collectively, the "Underlying Indices"): Russell 2000 Index, S&P Small Cap 600 Index, Nasdaq Composite Index, S&P 500 BARRA Value Index, S&P 500 BARRA Growth Index, S&P MidCap400 BARRA Value Index, S&P MidCap 400/BARRA Growth Index, S&P SmallCap 600/BARRA Value Index, S&P SmallCap 600/BARRA Growth Index, Dow Jones U.S. Airlines Index, Dow Jones U.S. Banks Index, Dow Jones U.S. Basic Materials Sector Index, Dow Jones U.S. Biotechnology Index, Dow Jones U.S. Composite Internet Index, Dow Jones U.S. Consumer Services Index, Dow Jones U.S. Consumer Goods Index, Dow Jones U.S. Oil & Gas Index, Dow Jones U.S. Financials Index, Dow Jones U.S. Health Care Index, Dow Jones U.S. Industrials Index, Dow Jones U.S. Leisure Goods Index, Dow Jones U.S. Oil Equipment, Services & Distribution Index, Dow Jones U.S. Pharmaceuticals Index, Dow Jones U.S. Precious Metals Index, Dow Jones U.S. Real Estate Index, Dow Jones U.S. Semiconductors Index, Dow Jones U.S. Technology Index, Dow Jones U.S. Telecommunications Index, Dow Jones U.S. Utilities Index, Dow Jones U.S. Mobile Communications Index. No index provider is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an

3. In addition to equity securities, the Funds may invest in short-term debt instruments that meet the definition of "Eligible Security" in rule 2a-7 under the Act ("Money Market Instruments"), and in futures contracts, options, equity caps, collars and floors, swap agreements, forward contracts, and reverse repurchase agreements (collectively, "Financial Instruments") in order to meet their investment objectives. A Conventional Fund will invest 95% or more of its total assets in the equity securities contained in the relevant Underlying Index and may invest up to 5% of its total assets in Financial Instruments and Money Market Instruments. Leveraged Funds will invest 85% or more of their total assets in equity securities contained in the relevant Underlying Index and up to 15% of their total assets in Financial Instruments and Money Market Instruments. The Inverse Funds will only invest in Financial Instruments and Money Market Instruments; they will not invest in equity securities.

4. The Adviser will seek to achieve the investment objectives of the Funds by using a mathematical model that takes into account a variety of specified criteria, the most important of which are: (a) The net assets in each Fund's portfolio at the end of each trading day; (b) the amount of required exposure to the Underlying Index; and (c) the positions in equity securities, Financial Instruments and Money Market Instruments at the beginning of each trading day. On each day that a Fund is open for business ("Business Day") the full portfolio holdings of each Fund will be disclosed on the Web site of the Trust and/or the relevant Exchange. The portfolio holdings information disclosed each Business Day will form the basis for that Fund's net asset value ("NAV") calculation as of 4 p.m. that day and will reflect portfolio trades made on the immediately preceding Business Day. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout the trading day.

5. Applicants expect that each Conventional Fund will have an annual tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the performance of its Underlying Index. For the Leveraged Fund and Inverse Funds, applicants expect a daily tracking error of less than 5% (excluding the impact of expenses and interest, if any) to the specified multiple or inverse multiple,

affiliated person, of the Trust, a promoter, the Adviser, any sub-adviser to any Fund, or the Distributor.

respectively, of the performance of the relevant Underlying Index.

6. Each Fund will issue ETS in aggregations of 25,000 to 50,000 ETS (each, a "Creation Unit"). Applicants expect the price of a Creation Unit to be a minimum of \$1 million. Creation Units may be purchased only by or through the Distributor or a party that has entered into a participant agreement with the Distributor (an "Authorized Participant"). An Authorized Participant must be either (a) a broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency that is registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC") system.

7. Creation Units of Conventional and Leveraged Funds generally will be purchased and redeemed in exchange for an "in-kind" transfer of securities and cash ("In-Kind Payment"). Inverse Funds will generally be purchased and redeemed entirely for cash because of the limited transferability of Financial Instruments.<sup>2</sup> An investor making an In-Kind Payment will be required to transfer to the Trust a "Deposit Basket" consisting of: (a) A basket of equity securities consisting of some or all of the securities in the relevant Underlying Index or equivalent equity securities selected by the Adviser to correspond to the performance of the Underlying Index (the "Deposit List"); and (b) a cash amount equal to the differential, if any, between the market value of the equity securities in the Deposit Basket and the NAV per Creation Unit ("Balancing Amount").<sup>3</sup> An investor purchasing a Creation Unit from a Fund

will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from the Fund incurring costs in connection with the purchase of the Creation Units.<sup>4</sup> The maximum Transaction Fee and any variations or waivers of the Transaction Fee will be disclosed in the prospectus for ETS ("Prospectus") and the method of determining the Transaction Fees will be disclosed in the Prospectus and/or statement of additional information ("SAI").

8. All orders to purchase Creation Units must be placed on a Business Day with the Distributor. The Distributor also will be responsible for delivering the Prospectus to those persons purchasing Creation Units and for maintaining records of the orders and acknowledgements of acceptance for orders.

9. Persons purchasing Creation Units from a Fund may hold the ETS or sell some or all of them in the secondary market. Shares of the Funds will be listed on an Exchange and trade in the secondary market in the same manner as other exchange-traded funds. It is expected that one or more Exchange members will act as a specialist or market maker and maintain a market on the listing Exchange for ETS.<sup>5</sup> The price of ETS traded on an Exchange will be based on a current bid/offer market. The initial trading price for each ETS of each Fund will fall in the range of \$50 to \$250. Transactions involving the sale of ETS in the secondary market will be subject to customary brokerage commissions and charges.

10. Applicants expect that purchasers of Creation Units will include institutional and retail investors, arbitrageurs, traders, financial advisors, portfolio managers and other market participants.<sup>6</sup> An Exchange specialist or market maker, in providing for a fair and orderly secondary market for ETS, also may purchase or redeem Creation Units for use in its market-making activities. Applicants expect that the

market price of ETS will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at their NAV, which should ensure that the market price of ETS at or close to 4 p.m. stays close to the NAV on that Business Day.

11. ETS will not be individually redeemable. ETS will only be redeemable in Creation Units through the Distributor, which will act as the Trust's agent for redemption. To redeem, an investor must accumulate enough ETS to constitute a Creation Unit. An investor redeeming a Creation Unit of a Conventional or Leveraged Fund generally will receive an "in-kind" payment comprised of equity securities published by the Trust's index receipt agent (the "Redemption List") plus a Balancing Amount equal to the difference between the market value of the equity securities on the Redemption List and the NAV of the ETS being redeemed. Redemptions of Creation Units for Inverse Funds will occur entirely in cash. A redeeming investor will pay a Transaction Fee to offset the transactional expenses associated with redeeming Creation Units.

12. Applicants state that neither the Trust nor any Fund will be advertised, marketed or otherwise held out as a "mutual fund." The term "mutual fund" will not be used in the Prospectus except to compare and contrast the Trust or a Fund with conventional mutual funds. In all marketing materials where the features or methods of obtaining, buying, or selling Creation Units are described or where there is reference to redeemability, applicants will include a prominent statement to the effect that individual ETS are not redeemable except in Creation Units. The same approach will be followed in connection with reports and other communications to shareholders, as well as any other investor education materials issued or circulated in connection with ETS. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of ETS.

### Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any

<sup>2</sup> The Trust may also accept and deliver all-cash payments for the purchase and redemption of Creation Units of any Fund in certain limited circumstances.

<sup>3</sup> On each Business Day, prior to the opening of trading on the New York Stock Exchange, the Trust's index receipt agent will make available the list of the names and the required number of shares of each equity security included in the current Deposit Basket and the Balancing Amount for each Fund. Such Deposit Basket will apply to all purchases of Creation Units until a new Deposit Basket for a Fund is announced. The Amex will disseminate every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association, an amount representing on a per share basis the sum of the current value of the securities on the Deposit List, and the estimated amount of cash and Money Market Instruments held in the portfolio of a Conventional or Leveraged Fund. If such funds hold Financial Instruments, the amount would also include, on a per share basis, the marked-to-market gains or losses of the Financial Instruments held by the Fund. For Inverse Funds, the Amex will disseminate an amount representing, on a per share basis, the estimated amount of cash and Money Market Instruments, and the marked-to-market gains or losses of the Fund's Financial Instruments.

<sup>4</sup> A purchaser permitted to substitute cash for certain securities on the Deposit List may be assessed a higher transaction Fee to cover the cost of purchasing such securities, including operational processing and brokerage costs, and part or all of the spread between the expected bid and offer side of the market relating to such securities.

<sup>5</sup> The listing requirements established by The NASDAQ Stock Market LLC require that at least two market makers be registered in ETS in order for the ETS to maintain a listing. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

<sup>6</sup> ETS will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding ETS. DTC or its participants will maintain records reflecting the beneficial owners of ETS.

class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*Sections 5(a)(1) and 2(a)(32) of the Act*

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because ETS will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue ETS of Funds that are redeemable in Creation Units only. Applicants state that investors may always redeem ETS in Creation Units from the Trust. Applicants further state that because the market price of ETS will be disciplined by arbitrage opportunities, investors should be able to sell ETS in the secondary market at or close to 4 p.m. on a Business Day at prices that do not vary substantially from the NAV on that Business Day.

*Section 22(d) of the Act and Rule 22c-1 Under the Act*

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in ETS will take place at negotiated prices, not at a current offering price described in the Prospectus as required by section 22(d) of the Act, and not at a price based on NAV as required by rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing ETS. Applicants maintain that

while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been intended to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting ETS to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in ETS does not involve the Trust's assets and cannot result in dilution of an investment in ETS, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand, not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in ETS will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of ETS and their NAV remains narrow.

*Section 24(d) of the Act*

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling ETS to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.<sup>7</sup>

<sup>7</sup>Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases ETS in Creation Units from the Issuer or an underwriter. Applicants state that persons purchasing Creation Units will be cautioned in the Prospectus that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions on the Securities Act. The Prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it takes Creation Units after placing an order with the Distributor, breaks them down into the constituent

8. Applicants state that secondary market investors will regard ETS in a manner similar to other securities, including closed-end fund shares that are listed, bought and sold on an Exchange. Applicants note that shares of closed-end fund investment companies are sold in the secondary market unaccompanied by a prospectus.

9. Applicants contend that ETS, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because ETS will be exchange-listed, prospective investors will have access to several types of market information about ETS. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day from the relevant Exchange, automated quotation systems, published or other public sources or on-line information services. Applicants expect that the previous day's closing price and volume information for ETS also will be published daily in the financial section of newspapers. In addition, the Trust expects to maintain a Web site that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the NAV and the reported closing price. The Web site will also include, for each Fund, a calculation of the premium or discount of the reported closing price against NAV, and data in chart format displaying the frequency distribution of discounts and premiums of the reported closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing the Trust, the Funds and the ETS. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about ETS that is tailored to meet the needs of investors purchasing ETS in the secondary market.

ETS, and sells ETS directly to its customers, or if it chooses to couple the purchase of a supply of new ETS with an active selling effort involving solicitation of secondary market demand for ETS. The Prospectus also will state that dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with ETS that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

*Sections 17(a)(1) and (2) of the Act*

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants state that one or more holders of Creation Units could own more than 5% of a Fund, or in excess of 25% of that Fund, and could be deemed affiliated with the Trust or such Fund under section 2(a)(3)(A) or 2(a)(3)(C) of the Act. Also, an Exchange specialist or market maker for ETS of any Fund might accumulate, from time to time, more than 5% or in excess of 25% of that Fund's ETS. Applicants request an exemption from section 17(a) of the Act under sections 6(c) and 17(b) of the Act, to permit persons that are affiliated persons of the Funds solely by virtue of a 5% or 25% ownership interest (or affiliated persons of such affiliated persons that are not otherwise affiliated with the Fund) to purchase and redeem Creation Units through "in-kind" transactions.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund described above from purchasing or redeeming Creation Units through "in-kind" transactions. The deposit and redemption procedures for "in-kind" purchases and redemptions of Creation Units will be effected in exactly the same manner for all purchases and redemptions. The securities contained in the "in-kind" transactions will be valued in the same manner and according to the same standards as the securities held by the relevant Fund. Therefore, applicants state that "in-

kind" purchases and redemptions will afford no opportunity for the affiliated persons described above to effect a transaction detrimental to the other holders of its ETS. Applicants also believe that "in-kind" purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds.

**Applicants' Conditions**

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a series of the Trust not identified herein, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless applicants have requested and received with respect to such series, either (a) exemptive relief from the Commission, or (b) a no-action letter from the Division of Investment Management of the Commission.

2. The Prospectus and the Product Description will clearly disclose that, for purposes of the Act, ETS are issued by the Funds and that the acquisition of ETS by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into an agreement with the Fund regarding the terms of the investment.

3. As long as the Trust operates in reliance on the requested order, the ETS will be listed on an Exchange.

4. Neither the Trust nor any Fund will be advertised or marketed as an open-end fund or a mutual fund. The Prospectus will prominently disclose that ETS are not individually redeemable shares and will disclose that the owners of the ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that ETS are not individually redeemable and that owners of ETS may acquire those ETS from the Trust and tender those ETS for redemption to the Trust in Creation Units only.

5. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule or an amendment thereto, requiring Exchange members and member organizations effecting transactions in

ETS to deliver a Product Description to purchasers of ETS.

6. The Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per ETS basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters (or the life of the Fund, if shorter). In addition, the Product Description for each Fund will state that the Trust's Web site has information about the premiums and discounts at which the ETS have traded.

7. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition 6(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years (or the life of the Fund, if shorter); and (b) the following data, calculated on a per ETS basis for one, five and ten year periods (or life of the Fund, if shorter), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

**[Investment Company Act Release No. 27324; 812-13280]**

### **WisdomTree Investments, Inc. et al.; Notice of Application**

May 18, 2006.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) for an