

2007–06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56871; File No. SR–ISE–2007–87]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Criteria for Securities That Underlie Options Traded on the Exchange

November 30, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on November 29, 2007, the International Securities Exchange, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

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

The ISE proposes to permit the initial and continued listing and trading on the Exchange of options on Index Multiple Exchange Traded Fund Shares (“Index Multiple ETFs”) and Index Inverse Exchange Traded Fund Shares (“Index Inverse ETFs”). The text of the proposed rule change is available at (<http://www.ise.com>), at the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The purpose of the proposed rule change is to amend ISE Rules 502 and 503 to enable the listing and trading on the Exchange of options on Index Multiple ETFs and Index Inverse ETFs. Index Multiple ETFs seek to provide investment results, before fees and expenses, that correspond to a specified multiple of the percentage performance on a given day of a particular foreign or domestic stock index. Index Inverse ETFs 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. Index Multiple ETFs and Index Inverse ETFs differ from traditional exchange-traded funds (“ETFs”) 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. The ProShares Ultra Funds, which currently trades on the American Stock Exchange (“Amex”), is an example of an Index Multiple ETF. Amex also currently lists for trading Index Inverse ETFs, namely the Short Funds and the UltraShort Funds.<sup>3</sup>

In order to achieve investment results that provide either a positive multiple or inverse of the benchmark index, Index Multiple ETFs or Index Inverse ETFs 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 Index Multiple ETFs generally will hold at least 85% of their assets in the component securities of the underlying relevant benchmark index. The remainder of any assets is devoted to Financial Instruments that are intended to create the additional needed exposure to such underlying index necessary to pursue its investment objective. Normally, 100% of the value of the underlying portfolios of Index Inverse ETFs will be devoted to Financial Instruments and money market instruments, including U.S. government securities and repurchase agreements (the “Money Market Instruments”).

Currently, ISE Rule 502(h) provides securities deemed appropriate for options trading shall include shares or other securities (“Fund Shares”) <sup>4</sup> that (i) represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that are traded on a national securities exchange or through the facilities of a national securities association and are defined as an “NMS stock” under Rule 600 of Regulation NMS, and that hold portfolios of securities comprising or otherwise based on or representing investments in broad-based indexes or portfolios of securities (or that hold securities in one or more other registered investment companies that themselves hold such portfolios of securities); or (ii) represent interests in a trust that holds a specified non-U.S. currency deposited with the trust 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 pays the beneficial owner interest and other distributions on the deposited non-U.S. currency, if any, declared and paid by the trust (“Funds”); 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/

<sup>3</sup> 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.

<sup>4</sup> ISE also proposes to make technical conforming changes to its current ISE Rules 502(h) and 503(h) to those of the Amex. As a result, and in the context of this filing, the Exchange refers to Fund Shares as Exchange-Traded Fund Shares hereafter.

<sup>10</sup> 17 CFR 200.30–3(a)(12).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

or options on physical commodities and/or non-U.S. currency ("Commodity Pool ETFs").

The Exchange proposes to amend ISE Rule 502(h) to expand the type of options to include the listing and trading of options based on Index Multiple ETFs and Index Inverse ETFs that may hold or invest in any combination of securities, Financial Instruments and/or Money Market Instruments. Index Multiple ETFs and Index Inverse ETFs will continue to otherwise satisfy the listing standards in ISE Rule 502(h). The Exchange also proposes to make non-substantive, clarifying changes to its Rule 502(h) by conforming the construction of this rule to that of the Amex. The Exchange notes that this change is purely aesthetic and does not make any substantive changes to the listing standards found in ISE Rule 502(h). Accordingly, in addition to certain repositioning of existing rule text, the Exchange also proposes to (1) remove the reference to a "national securities association" in ISE Rule 502(h)(i), and (2) add the words "or currencies" to ISE Rule 502(h)(ii).

As set forth in proposed amended ISE Rule 502(h), Index Multiple ETFs and Index Inverse ETFs must be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS. In addition, Index Multiple ETFs and Index Inverse ETFs must meet either: (i) The criteria and guidelines under ISE Rules 502(a) and 502(b); or (ii) be available for creation or redemption each business day from or through the issuing trust, investment company, commodity pool or other entity in cash or in kind at a price related to net asset value, and the issuer is obligated to issue Exchange-Traded Fund Shares in a specified aggregate number even if some or all of the investment assets and/or cash required to be deposited have not been received by the issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer of the Exchange-Traded Fund Shares fund, all as described in the prospectus.

The Exchange's current continued listing standards for options on Fund Shares will continue to apply.

The Exchange proposes to amend ISE Rule 503(h) to indicate that the index or portfolio may consist of, among other things, securities, Financial Instruments and/or Money Market Instruments. In proposing to make conforming changes

to the Exchange's rules to those of the Amex, ISE seeks to amend ISE Rule 503(h) by (1) deleting a reference to "national securities association" and (2) adding the words "or suspended".

Under the applicable continued listing criteria in ISE Rule 503(h), options on Exchange-Traded 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 Exchange-Traded Fund Shares, there are fewer than 50 record and/or beneficial holders of the Exchange-Traded Fund Shares for 30 or more consecutive trading days; (2) the value of the index or portfolio of securities or non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts, options on physical commodities, and/or Financial Instruments and Money Market Instruments, on which the Exchange-Traded 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 Exchange-Traded 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 Index Multiple ETFs or Index Inverse ETFs, if the underlying ETFs are halted or suspended from trading on their primary market or if the underlying ETFs are delisted in accordance with the terms of ISE Rule 503(h) or the value of the index or portfolio on which the underlying ETFs are based is no longer calculated or available.

The expansion of the types of investments that may be held by Index Multiple ETFs or Index Inverse ETFs under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits<sup>5</sup> or margin.<sup>6</sup>

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.<sup>7</sup> ISE believes the ability to trade options on Index Multiple ETFs and Index Inverse ETFs will provide investors with greater risk management tools. The proposed amendment to the Exchange's listing criteria for options on Fund Shares is necessary to ensure that the Exchange

will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple ETFs or Index Inverse ETFs that may be introduced in the future.

The Exchange represents that its existing surveillance procedures applicable to trading in options are adequate to properly monitor the trading in Index Multiple ETF options and Index Inverse ETF options.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act<sup>8</sup> in general and furthers the objectives of Section 6(b)(5)<sup>9</sup> in particular in that it is designed 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.

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

The proposed rule change does not impose any burden on competition.

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

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

## III. Solicitation of Comments

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

### Electronic Comments

- Use the Commission's Internet comment form at <http://www.sec.gov/rules/sro.shtml>; or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2007-87 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 No. SR-ISE-2007-87. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

<sup>5</sup> See ISE Rules 412 and 414.

<sup>6</sup> See ISE Rule 1202.

<sup>7</sup> See *supra*, note 3.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site at <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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 No. SR-ISE-2007-87 and should be submitted on or before December 27, 2007.

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

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,<sup>10</sup> and in particular, the requirements of Section 6(b) of the Act.<sup>11</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>12</sup> 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 options on Index Multiple ETFs and Index Inverse ETFs. In addition, the Exchange has represented that the expansion of the types of investments that may be held by Index Multiple ETFs or Index Inverse ETFs under ISE Rule 502(h) will not have any effect on the rules pertaining to position and exercise limits<sup>13</sup> or margin.<sup>14</sup>

#### Listing and Trading Options on Fund Shares

The Commission notes that, pursuant to the proposed rule change, the Exchange represented that the current continuing 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 ISE Rule 502(h), would require that Index Multiple ETFs and Index Inverse ETFs be traded on a national securities exchange and must be an "NMS stock" as defined under Rule 600 of Regulation NMS.<sup>15</sup>

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 Index Multiple ETFs and Index Inverse ETFs 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 Fund Shares will ensure that the Exchange will be able to list options on the Funds of the ProShares Trust as well as other Index Multiple ETFs and Index Inverse ETFs that may be introduced in the future, thereby affording investors greater investment choices.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has recently approved substantially similar proposals by other national securities exchanges.<sup>16</sup> This proposed rule change does not raise any new, unique, or

substantive issues that differ substantially from those raised in the prior filings that would preclude the trading of the options on Index Multiple ETFs or Index Inverse ETFs on the Exchange. Therefore, accelerating approval of this proposal should benefit investors by creating, without delay, additional competition in the market for these types of options.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change, (SR-ISE-2007-87), is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56866; File No. SR-ISE-2007-102]

#### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Permit Trading of Shares of 93 Funds of the ProShares Trust Pursuant to Unlisted Trading Privileges

November 29, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 25, 2007, the International Securities Exchange, LLC ("Exchange" or "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On November 29, 2007, ISE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> This order provides notice of the proposed rule change and approves the proposal, as modified by Amendment No. 1, on an accelerated basis.

<sup>1</sup> 15 U.S.C. 78s(b)(2).

<sup>2</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 supersedes and replaces the original filing in its entirety.

<sup>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> See ISE Rules 412 and 414.

<sup>14</sup> See ISE Rule 1202.

<sup>15</sup> 17 CFR 242.600(b)(47).

<sup>16</sup> See Securities Exchange Act Release Nos. 56650 (October 12, 2007), 72 FR 59123 (October 18, 2007) (approving SR-Amex-2007-35) and 56715 (October 29, 2007), 72 FR 62287 (November 2, 2007) (approving SR-CBOE-2007-119 on an accelerated basis).