

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60140; File No. SR-NYSEAmex-2009-27]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to WAIT Modifiers, PNP Plus Orders, and Attributable Orders

June 18, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on June 8, 2009, NYSE Amex LLC (“NYSE Amex” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 900.3NY to (i) offer the “WAIT” order modifier for use with orders entered into the NYSE Amex System; (ii) allow the use of attributable orders (iii) offer PNP Plus orders. The WAIT modifier is designed to enhance compliance with the order exposure requirement of NYSE Amex Rule 935NY. Attributable orders allow users to voluntarily display their firm IDs on the orders. PNP Plus orders allow Users greater control over the circumstances of order execution. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange’s Web site at <http://www.nyse.com>, at the Exchange’s principal office and at the Commission’s Public Reference Room.

<sup>8</sup> 17 CFR 200.30-3(a)(12).

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

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

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

In its filing with the Commission, the self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

###### *WAIT Orders*

On May 21, 2009, the Securities and Exchange Commission approved NYSE Amex’s proposal to reduce the order exposure requirement of Rule 935NY from three seconds to one second.<sup>3</sup> Rule 935NY prohibits Users from executing as principal orders they represent as agent unless (i) agency orders are first exposed on the Exchange for at least one (1) second or (ii) the User has been bidding or offering on the Exchange for at least one (1) second prior to receiving an agency order that is executable against such bid or offer. This Rule insures that a User does not gain at the expense of customers by depriving them of the opportunity to interact with orders in the NYSE Amex System.

Users that enter agency orders into the NYSE Amex System have noted the proposal by the NASDAQ Options Market (“NOM”) for a WAIT order modifier,<sup>4</sup> and have asked the Exchange to develop an automated mechanism that permits them to enter orders into the NYSE Amex System as soon as the orders are received but that also prevents them from interacting with their own agency orders in violation of the order exposure requirement. NYSE Amex believes this is an efficient use of resources because it will allow NYSE Amex to program its System once rather than have multiple Users re-program their systems.

<sup>3</sup> See Exchange Act Release No. 59956 (May 21, 2009), 74 FR 25782 (May 29, 2009) (SR-NYSEAmex-2009-15) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Rule 935NY—Order Exposure Requirements to Reduce the Exposure Periods from Three Seconds to One Second).

<sup>4</sup> See Exchange Act Release No. 59557 (March 11, 2009), 74 FR 11389 (March 17, 2009) (SR-NASDAQ-2009-017).

In order to accomplish that request, NYSE Amex has developed the “WAIT” modifier which can be appended to an order prior to entry into the NYSE Amex System. The WAIT modifier will instruct the System to wait precisely one second from the time of order entry before processing the order in accordance with the other instructions attached to that order. Upon expiration of the one-second WAIT period, the System will time stamp, route, display, or execute the order in accordance with the entering party’s other order entry instructions. Thus, the WAIT modifier does not affect the existing display, routing, or execution priorities of the NYSE Amex System or any other obligations of Users as set forth in the NYSE Amex rules.

Orders designated with the WAIT modifier are independent of all other orders, including an agency order that is being exposed pursuant to Rule 935NY. WAIT orders are not associated or in any way linked to another order entered into the System, as is the case with certain facilitation orders at other options exchanges. The System will process the WAIT order even if a customer order entered into the System simultaneously with the WAIT order has been executed or cancelled during the WAIT second, unless the WAIT order itself is modified or cancelled pursuant to System rules. As a result, there is no guarantee that an order designated as WAIT will execute against another specific order. Use of the WAIT modifier is completely voluntary.

###### Attributable Orders

The Exchange proposes to modify Rule 900.3NY (Orders Defined) to allow for the submission of attributable orders. These orders allow users to voluntarily display their firm IDs on the orders.<sup>5</sup> The NASDAQ Options Market, LLC (“NOM”) currently allows its participants to submit attributable orders (See NOM Chapter VI, Section (1)(d)(1)).<sup>6</sup> As proposed, the Exchange may limit the processes for which attributable orders will be available. This proposal is responsive to requests by Exchange Users who believe that enhanced executions may be obtained if Firm ID is allowed on orders (on a voluntary basis).

<sup>5</sup> A Firm ID is a 5 character identification code (letters and/or numbers) Each ATP Holder is assigned its own unique Firm ID.

<sup>6</sup> The Chicago Board Options Exchange (“CBOE”) also allows attributable orders. See Exchange Act Release No. 58394 (August 20, 2008), 73 FR 50379 (August 26, 2008) (SR-CBOE-2008-85) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting a New Order Type).

## PNP Plus

As part of its continuing efforts to enhance participation on the Exchange, and provide additional tools to control the circumstances in which orders are executed, NYSE Amex proposes to adopt an order type known as "PNP Plus." PNP Plus Orders are currently offered on the NYSE Arca Equities market.<sup>7</sup>

A PNP Order is an order entered into the NYSE Amex System for execution on the Exchange, but not for routing to away markets. Because of the condition to not route PNP orders, they are cancelled if they would otherwise lock or cross the NBBO.

Customers have requested that the exchange develop a PNP Order type that would, if marketable against the NBBO but not executable on the Exchange, be represented in the Exchange's disseminated market by re-pricing the order. Specifically, if posting a PNP Plus order or a portion thereof would otherwise result in locking or crossing the NBBO, the PNP order would automatically be re-priced to be one Minimum Price Valuation ("MPV") greater than the NBBO bid (for sell orders) or one MPV less than the NBBO offer (for buy orders), thus avoiding locking or crossing the NBBO. The re-priced bid or offer is included in the Exchange's disseminated quote.

If the NBBO changes, and the order is marketable against the new NBBO, but still not executable on the Exchange, the PNP Plus order would again be re-priced to be one MPV away from the NBBO. When re-priced, the PNP Plus order is re-ranked at the new price. The order would continue to be re-priced and re-ranked with each change in the NBBO, until such time that the NBBO moves such that the original price of the PNP Plus Order would no longer lock or cross the NBBO. The PNP Plus Order would then automatically be re-priced back to its original limit price and re-ranked in the Consolidated Book. The PNP Plus Order will not be re-priced if the order becomes locked or crossed by another market.

The Exchange believes that the implementation of the aforementioned rule change modifying NYSE Amex order entry options will enhance compliance with NYSE Amex rules, preserve order execution opportunities on the NYSE Amex market, provide greater control over the circumstances of executions, and provide an opportunity for enhanced executions.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest, by providing investors with additional order types that allow greater flexibility in maintaining compliance with the rules, or providing an opportunity for enhanced executions, or managing the circumstances in which their orders are executed.

*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*

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(6) thereunder.<sup>9</sup> Because the 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) become operative prior to 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup>

The Exchange has asked the Commission to waive the 30-day

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is based on existing rules of other exchanges<sup>12</sup> and does not appear to present any novel or significant issues. The Commission hereby grants the Exchange's request.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2009-27 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAmex-2009-27. 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

<sup>12</sup> See, e.g., Securities Exchange Act Release No. 59737 (April 9, 2009) 74 FR 18018 (April 20, 2009) (SR-NYSEArca-2009-27) (adopting "WAIT" order modifier, attributable orders, and PNP Plus order type).

<sup>13</sup> 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. See 15 U.S.C. 78c(f).

<sup>7</sup> See NYSE Arca Equities Rule 7.31(w)(1).

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 the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. 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-NYSEAmex-2009-27 and should be submitted on or before July 16, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-60128; File No. SR-NYSEArca-2009-53]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of ProShares UltraShort MSCI Mexico Investable Market Fund

June 17, 2009.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 12, 2009, NYSE Arca, Inc. ("NYSE Arca" 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 prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares ("Shares") of the following fund of the ProShares Trust ("Trust"): ProShares UltraShort MSCI Mexico Investable Market Fund. The text of the proposed rule change is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office and at the Public Reference Room of the Commission.

#### 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

###### 1. Purpose

The Exchange proposes to list and trade the Shares of the following fund under NYSE Arca Equities Rule 5.2(j)(3), the Exchange's listing standards for Investment Company Units ("ICUs"):<sup>4</sup> ProShares UltraShort MSCI Mexico Investable Market Fund (the "Fund"). The Fund is an "index fund" that seeks to provide daily investment results that, before fees and expenses, correspond to twice the inverse (-200%) of the daily performance of the MSCI Mexico Investable Market Index ("Index"). The Fund does not seek to achieve its stated objective over a period of time greater than one day.

According to the Trust's Registration Statement,<sup>5</sup> the Index measures the performance of the Mexican equity market. The Index is a capitalization-

weighted index that aims to capture 99% of the publicly available total market capitalization. Component companies are adjusted for available float and must meet objective criteria for inclusion in the Index, taking into consideration unavailable strategic shareholdings and limitations to foreign ownership. As of March 31, 2009, the Index was concentrated in the telecommunications services industry group, which comprised 43% of the market capitalization of the Index, and included companies with capitalizations between \$13 million and \$26 billion. The average capitalization of the companies comprising the Index was approximately \$1.7 billion.

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the "generic" listing requirements of Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3) applicable to listing of ICUs based on international or global indexes. The Index meets all such requirements except for those set forth in Commentary .01(a)(B)(3).<sup>6</sup> The Exchange represents that (1) except for the requirement under Commentary .01(a)(B)(3) to NYSE Arca Equities Rule 5.2(j)(3) that the most heavily weighted component stock shall not exceed 25% of the weight of the Index and that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index, the Shares of the Fund currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to ICUs shall apply to the Shares; and (3) the Trust is required to comply with Rule 10A-3<sup>7</sup> under the Securities Exchange Act of 1934 (the "Act") for the initial and continued listing of the Shares. In addition, the Exchange represents that the Shares will comply with all other requirements applicable to ICUs including, but not limited to, requirements relating to the dissemination of key information such as the Index value and Intraday Indicative Value, rules governing the trading of equity securities, trading

<sup>4</sup> An Investment Company Unit is a security that represents an interest in a registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities (or holds securities in another registered investment company that holds securities comprising, or otherwise based on or representing an interest in, an index or portfolio of securities). See NYSE Arca Equities Rule 5.2(j)(3)(A).

<sup>5</sup> See the Trust's Registration Statement on Form N-1A, dated June 2, 2009 (File Nos. 333-89822 and 811-21114) ("Registration Statement").

<sup>6</sup> Specifically, the Index fails to meet the requirement that the most heavily weighted component stock shall not exceed 25% of the weight of the Index. As of May 27, 2009, the most heavily weighted component stock (America Movil) represented 32.65% of the Index weight. In addition, the Index fails to meet the requirement that the five most heavily weighted component stocks shall not exceed 60% of the weight of the Index. As of May 27, 2009, the five most heavily weighted component stocks represented 60.64% of the Index weight.

<sup>7</sup> 17 CFR 240.10A-3.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.