

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re ProShares Trust Securities Litigation)
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Civil Action No. 09-cv-6935
ECF Case
All Related Actions
~~PROPOSED~~ ORDER

Since August 5, 2009, thirty-three related putative securities class actions (the “Related Actions”) have been filed against ProShares Trust and other individual and entity defendants¹ (collectively, “Defendants”) and assigned to this Court. All thirty-three actions allege violations of Sections 11 and 15 of the Securities Act of 1933 arising from Plaintiffs’ investments in certain inverse and leveraged exchange-traded funds (“ETFs”) offered by ProShares Trust. Currently at issue are sixteen ETFs.²

On October 20, 2009, Defendants filed a motion pursuant to Rule 42(a) of the Federal Rules of Civil Procedure seeking consolidation for all purposes of all pending actions. On April 23, 2010, the Court held a pretrial conference. For the reasons stated on the record at the pretrial conference, Defendants’ motion to consolidate is granted.³ All thirty-three actions shall be consolidated into one action (the “Consolidated Action”) bearing the above caption, and the

¹ The other defendants are: ProShare Advisors LLC, SEI Investments Distribution Co., Louis M. Mayberg, Michael L. Sapir, Simon D. Collier, Michael Wachs, and Russell S. Reynolds, III.
² One of the ETFs is offered by ProShares Trust II, a distinct entity.
³ Also pending is Defendants’ request to consolidate an individual action currently pending before the Court – *Schnall v. ProShares Trust*, No. 10-cv-3042-JGK – with the Related Actions. For the reasons set forth on the record at the April 23, 2010 conference before the Court, that request shall be separately briefed and considered by the Court.

Clerk is directed to close the thirty-two dockets listed in Exhibit A. All filings in the Consolidated Action shall bear the above caption and shall be filed only in the docket indicated above. In the event that any future related actions are assigned to this Court, the Court shall – if appropriate, and upon due consideration of Rule 42(a) factors – enter an order consolidating any such actions with the Consolidated Action.

Stipulations between Plaintiffs and Defendants concerning service of the complaints and the deadline for filing any consolidated amended complaint and any eventual motion to dismiss have been entered in a number of the Related Actions. For those Related Actions in which no stipulation has been entered, Defendants are deemed to have accepted service of the complaint as of the date of this order. For any actions filed after the date of this order and consolidated by this Court under this docket number as described above, Defendants shall be deemed to have accepted service upon delivery of a copy of the complaint and summons to counsel for ProShares Trust at Ropes & Gray LLP, or as of the date that the Court enters an order of consolidation, whichever occurs later.⁴ Consistent with the terms of the stipulations already entered, once the Court appoints a lead plaintiff or lead plaintiffs (the “Lead Plaintiff”) in the Consolidated Action:⁵

1. Lead Plaintiff shall file any consolidated amended complaint within thirty (30) days following the entry of the order appointment Lead Plaintiff and lead counsel.

⁴ Acceptance of service by Defendants under the term of this Order shall not constitute waiver of any defenses to any complaint other than the defense of improper service.

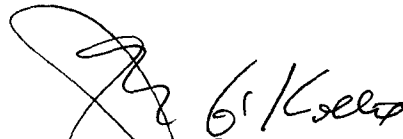
⁵ For the reasons stated at the April 23, 2010 conference before the Court, all pending lead plaintiff motions in the Related Actions are dismissed without prejudice and lead plaintiff briefing in the Consolidated Action shall take place under the briefing schedule set by the Court.

2. Defendants shall have thirty (30) days following the filing of any consolidated amended complaint to answer, move against, or otherwise respond to that complaint.

3. In the event that Defendants file one or more motions to dismiss the consolidated amended complaint, Lead Plaintiff shall have thirty (30) days to file its opposition or oppositions, and Defendants shall have thirty (30) days thereafter to file their reply or replies.


SO ORDERED.

Dated: 4/27/10



Honorable John G. Koeltl
United States District Judge

The Clerk is directed to close all pending motions in the 33 Related Actions.

SO ORDERED.


U.S.D.S.

EXHIBIT A

1. *Sankowich v. ProShares Trust et al.*, No. 09-cv-7356-JGK
2. *McBride v. ProShares Trust et al.*, No. 09-cv-7392-JGK
3. *Hirth v. ProShares Trust et al.*, No. 09-cv-7505-JGK
4. *Marconi v. ProShares Trust et al.*, No. 09-cv-8189-JGK
5. *Bolton v. ProShares Trust et al.*, No. 09-cv-8200-JGK
6. *Chen v. ProShares Trust et al.*, No. 09-cv-8202-JGK
7. *Knobel v. ProShares Trust et al.*, No. 09-cv-8293-JGK
8. *Normand v. ProShares Trust et al.*, No. 09-cv-8327-JGK
9. *Worden v. ProShares Trust et al.*, No. 09-cv-8662-JGK
10. *Solars v. ProShares Trust et al.*, No. 09-cv-8926-JGK
11. *Setyan v. ProShares Trust et al.*, No. 09-cv-8953-JGK
12. *Setyan v. ProShares Trust et al.*, No. 09-cv-8954-JGK
13. *Vidrine v. ProShares Trust et al.*, No. 09-cv-8957-JGK
14. *Piplica v. ProShares Trust et al.*, No. 09-cv-8958-JGK
15. *Kaiser v. ProShares Trust et al.*, No. 09-cv-9077-JGK
16. *Bowman v. ProShares Trust et al.*, No. 09-cv-9109-JGK
17. *Rhoads v. ProShares Trust et al.*, No. 09-cv-9110-JGK
18. *Pacifico v. ProShares Trust et al.*, No. 09-cv-9134-JGK
19. *Setyan v. ProShares Trust et al.*, No. 09-cv-9148-JGK
20. *Setyan v. ProShares Trust et al.*, No. 09-cv-9168-JGK
21. *Setyan v. ProShares Trust et al.*, No. 09-cv-9300-JGK
22. *Pacifico v. ProShares Trust et al.*, No. 09-cv-9427-JGK
23. *Annunziato v. ProShares Trust et al.*, No. 09-cv-9593-JGK
24. *Spenceley v. ProShares Trust et al.*, No. 09-cv-9942-JGK
25. *Jones v. ProShares Trust et al.*, No. 10-cv-0111-JGK
26. *Schwack v. ProShares Trust et al.*, No. 10-cv-0272-JGK
27. *Ghoghari v. ProShares Trust et al.*, No. 10-cv-0925-JGK
28. *Ghoghari v. ProShares Trust et al.*, No. 10-cv-01174-JGK
29. *Smeltz v. ProShares Trust et al.*, No. 10-cv-2118-JGK
30. *Conrad v. ProShares Trust et al.*, No. 10-cv-2570-JGK
31. *Hyman v. ProShares Trust et al.*, No. 10-cv-3061-JGK
32. *Chow v. ProShares Trust et al.*, No. 10-cv-3211-JGK