Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [23] that an exchange have rules that are 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, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of additional types of exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.600 are intended to protect investors and the public interest.

[23] 15 U.S.C. 78f(b)(5).

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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.* Please include File Number SR–NYSEArca–2010–116 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–NYSEArca–2010–116. 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 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 Web site viewing and printing 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 Number SR–NYSEArca-2010–116 and should be submitted on or before January 18, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–32943 Filed 12–30–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63610; File No. SR–NYSEArca–2010–10]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF

December 27, 2010.

I. Introduction

On November 5, 2010, NYSE Arca, Inc. ("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 list and trade shares ("Shares") of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") of the ProShares Trust II ("Trust") under NYSE Arca Equities Rule 8.200, Commentary .02.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The proposed rule change was published for comment in the **Federal Register** on November 22, 2010.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds will seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, "Indexes").[5] The Funds will invest in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") to pursue their respective investment objectives. Each Fund also may invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable-rate demand notes, and repurchase agreements collateralized by government securities) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC, a Maryland limited liability company, serves as the Sponsor of the Trust and is a commodity pool operator and commodity trading advisor.[6] Brown Brothers Harriman & Co. serves as the administrator ("Administrator"), custodian and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. serves as distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

If a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when it declines. Each Fund will acquire exposure through VIX futures contracts traded on the CBOE Futures Exchange ("CFE") ("VIX Futures Contracts"), such that each Fund has exposure intended to approximate the benchmark at the time of the net asset value ("NAV") calculation.

Each Fund will not be actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial, and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor will seek to cause the NAV to track the performance of an Index, even during periods in which that benchmark is flat or moving in a manner which causes the NAV of a Fund to decline.

The Indexes act as a measure of volatility as reflected by the price of certain VIX Futures Contracts ("Index Components"), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts. Unlike the Indexes, the VIX, which is not a benchmark for either Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five-month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth, and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Additional information regarding the Funds and the Shares, the Indexes and calculation of Index values, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Registration Statement and in the Notice, as applicable.[7]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed 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. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200, Commentary .02 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[11] which sets forth Congress' finding that it is in the

[3] *See* Securities Exchange Act Release No. 63317 (November 16, 2010), 75 FR 71158 ("Notice").

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

[5] Standard & Poor's Financial Services LLC is the index sponsor with respect to the Indexes.

[6] The Funds have filed a Registration Statement on Form S–3 under the Securities Act of 1933, dated November 5, 2010 (File No. 333–163511) ("Registration Statement").

[7] *See* Notice and Registration Statement, *supra* notes 3 and 6.

[8] 15 U.S.C. 78f.

[9] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 17 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1)(C)(iii).

public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. The level of each Index will be published at least every 15 seconds both in real-time from 9:30 a.m. to 4:15 p.m. Eastern Time and at the close of trading on each Business Day [12] by Bloomberg L.P. and Reuters.[13] The closing prices and settlement prices of the Index Components are available from the Web sites of the CFE, automated quotation systems, published or other public sources, and on-line information services such as Bloomberg or Reuters. The specific contract specifications for the component futures underlying the Indexes are also available on those Web sites, as well as on other financial informational sources. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. In addition, the Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts and characteristics of such instruments and cash equivalents, and amount of cash held in the portfolio of the Funds. Further, NYSE Arca will calculate and disseminate every 15 seconds throughout the trading day an updated Indicative Optimized Portfolio Value ("IOPV"), which is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund.[14] The NAV for the Funds' Shares will be calculated by the Administrator once a day,[15] and the Exchange will make available on its Web site daily trading volume of the Shares, closing prices of the Shares, and number of Shares outstanding.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds of the portfolio composition to Authorized Participants so that all market participants are provided portfolio composition information at the same time. In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, the Exchange will halt trading in the Shares until such time as the NAV is available to all market participants. Further, the Exchange may halt trading during the day in which an interruption to the dissemination to the IOPV, the value of the Index, the VIX, or the value of the underlying VIX Futures Contracts occurs. If such interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[16] Trading in the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on ETP Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. The Exchange represents that Standard & Poor's Financial Services LLC, the index sponsor with respect to the Indexes, has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

The Exchange has represented that the Shares are deemed to be equity securities subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Funds will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (c) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (d) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (e) trading information.

(5) The Shares must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act.[17]

(6) A minimum of 100,000 Shares of each of the Funds will be outstanding as of the start of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–NYSEArca–2010–101), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

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[12] A "Business Day" means any day other than a day when any of the NYSE, the NYSE Arca, the CBOE, or the CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for regular trading.

[13] Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. In addition, the Funds' Web site at *http://www.proshares.com* will display the end of day closing Index levels and NAV.

[14] The IOPV is published on NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.

[15] Each Fund's NAV will be calculated at 4:15 p.m. Eastern Time.

[16] Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[17] 17 CFR 240.10A–3.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).