

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 email to rule-comments@sec.gov. Please include File Number SR-C2-2017-011 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-C2-2017-011. This file number should be included on the subject line if email 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 10:00 a.m. and 3:00 p.m. Copies of the 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-C2-2017-011, and should be submitted on or before April 18, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80296; File No. SR-NYSEArca-2017-07]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1, 3, and 4 Thereto, To List and Trade Shares of the ProShares UltraPro 3x Crude Oil ETF and ProShares UltraPro 3x Short Crude Oil ETF Under NYSE Arca Equities Rule 8.200

March 22, 2017.

I. Introduction

On January 26, 2017, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares ("Shares") of the ProShares UltraPro 3x Crude Oil ETF and ProShares UltraPro 3x Short Crude Oil ETF (each a "Fund," and collectively the "Funds") under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on February 7, 2017.⁴ On March 9, 2017, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ On March 10, 2017, the

³⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 79917 (February 1, 2017), 82 FR 9620.

⁵ In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (1) Supplemented its description of the Funds' investments in over-the-counter ("OTC") transactions; (2) provided clarification and additional specificity regarding the holding and settlement of futures contracts and options on such futures; (3) provided additional details regarding the calculation of the Bloomberg WTI Crude Oil SubindexSM; (4) provided information regarding the calculation and dissemination of the Indicative Fund Value of the Funds; (5) provided additional clarification regarding the difference between the net asset value calculation time and the creation and redemption cut-off time for the Funds; (6) clarified the information that will be made available on the Funds' Web site regarding the Funds and their portfolio holdings; (7) supplemented its description of the Exchange's surveillance procedures; (8) represented that the applicability of Exchange listing rules specified in the proposed

Exchange filed and withdrew Amendment No. 2 to the proposed rule change,⁶ and filed Amendment No. 3 to the proposed rule change.⁷ On March 20, 2017, the Exchange filed Amendment No. 4 to the proposed rule change.⁸ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto.

II. Exchange's Description of the Proposal⁹

The Exchange proposes to list and trade the Shares under NYSE Arca Equities Rule 8.200, Commentary .02, which governs the listing and trading of Trust Issued Receipts.¹⁰ Each Fund is a

rule change shall constitute continued listing requirements for listing the Shares on the Exchange; (9) clarified the type of information that will be available in the Information Bulletin regarding the Funds' portfolio holdings; and (10) made other technical amendments. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2017-07/nysearca201707-1630210-137426.pdf>. Amendment No. 1 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁶ Notice of the Exchange's withdrawal of Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-nysearca-2017-07/nysearca201707-1644096-147899.pdf>.

⁷ In Amendment No. 3, which partially amended the proposed rule change, as modified by Amendment No. 1 thereto, the Exchange added a representation regarding the dissemination of the value of the Bloomberg WTI Crude Oil SubindexSM. Amendment No. 3 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2017-07/nysearca201707-1644096-147899.pdf>. Amendment No. 3 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁸ In Amendment No. 4, which partially amended the proposed rule change, as modified by Amendment Nos. 1 and 3 thereto, the Exchange: (1) Clarified its use of the term "Futures Contracts" and (2) provided additional clarification regarding the calculation of the Indicative Fund Value. Amendment No. 4 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-nysearca-2017-07/nysearca201707-1657390-148729.pdf>. Amendment No. 4 is not subject to notice and comment because it is a technical amendment that does not materially alter the substance of the proposed rule change or raise any novel regulatory issues.

⁹ A more detailed description of the Funds, the Shares, and the Benchmark, as well as investment risks, creation and redemption procedures, net asset value ("NAV") calculation, availability of values and other information regarding the Funds' portfolio holdings, and fees, among other things, is included in the Registration Statement, as well as Amendment Nos. 1, 3, and 4, as applicable. See *infra* note 11, and *supra* notes 5, 7, and 8, respectively.

¹⁰ 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;

series of the ProShares Trust II (“Trust”), a Delaware statutory trust.¹¹ The Trust and the Funds are managed and controlled by ProShare Capital Management LLC (“ProShare Capital”). ProShare Capital is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association. Brown Brothers Harriman & Co. will be the custodian, registrar, and transfer agent, and administrator for the Funds. SEI Investments Distribution Co. serves as distributor for the Funds.

Overview of the Funds

The investment objective of the ProShares UltraPro 3x Crude Oil ETF is to seek, on a daily basis,¹² investment results that correspond (before fees and expenses) to three times (3×) the performance of the Bloomberg WTI Crude Oil SubindexSM (“Benchmark”).¹³ The investment objective of the ProShares UltraPro 3x Short Crude Oil ETF is to seek, on a daily basis, investment results that correspond (before fees and expenses) to three times (3×) the inverse of the performance of the Benchmark. The Benchmark is intended to reflect the performance of crude oil as measured by the price of futures contracts of West Texas Intermediate sweet, light crude oil listed on the New York Mercantile Exchange (“NYMEX”), including the impact of rolling, without regard to income earned on cash positions.

In seeking to achieve the Funds’ investment objectives, ProShare Capital will utilize a mathematical approach to determine the type, quantity and mix of

securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

¹¹ The Trust is registered under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”). On December 9, 2016, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act relating to the Funds (File No. 333-214904) (“Registration Statement”). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement.

¹² The Fund does not seek to achieve its investment objective over a period greater than a single trading day. The Exchange states that the return of a Fund for a period longer than a single trading day is the result of its return for each day compounded over the period and thus will usually differ from a Fund’s multiple times the return of the Benchmark for the same period. See Amendment No. 1, *supra* note 5, at 5.

¹³ According to the Exchange, the Bloomberg WTI Crude Oil SubindexSM is a “rolling index,” which means that the Index performance includes the impact of closing out futures contracts that are nearing expiration and replacing them with futures contracts with later expirations. The Exchange states that this process is commonly referred to as “rolling.” See *id.* at 5 n.6.

investment positions that ProShare Capital believes, in combination, should produce daily returns consistent with the Funds’ respective objectives. ProShare Capital will rely on a pre-determined model to generate orders that result in repositioning the Funds’ investments in accordance with their respective investment objectives.

Investments of the Funds

Each Fund will seek to achieve its respective investment objective by investing, under normal market conditions,¹⁴ substantially all of its assets in futures contracts for West Texas Intermediate sweet, light crude oil listed on the NYMEX, ICE Futures U.S. or other U.S. exchanges (“Futures”) and listed options on such contracts (“Options” and, together with Futures, “Futures Contracts”). The Funds will not invest directly in oil. A Fund’s investments in Futures Contracts will be used to produce economically “leveraged” or “inverse leveraged” investment in a manner consistent with the respective Fund’s investment objective.

In the event position, price or accountability limits are reached with respect to Futures Contracts,¹⁵ each Fund may obtain exposure to the Benchmark through investments in swap agreements and forward contracts referencing such Benchmark (“Financial Instruments”). To the extent that a Fund invests in Financial Instruments, it would first make use of exchange-traded Financial Instruments, if available. If an investment in exchange-traded Financial Instruments is unavailable, then a Fund would invest in Financial Instruments that clear through derivatives clearing organizations that satisfy the Trust’s criteria, if available. If

¹⁴ The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. See *id.* at 6 n.9.

¹⁵ Designated contract markets, such as the NYMEX and ICE Futures U.S., have established accountability levels and position limits on the maximum net long or net short Futures Contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge, which an investment by a Fund is not) may hold, own or control. These levels and position limits apply to the Futures Contracts that each Fund would invest in to meet its investment objective. In addition to accountability levels and position limits, NYMEX and ICE Futures U.S. also set price fluctuation limits on Futures Contracts. The price fluctuation limit establishes the amount that the price of Futures may vary either up or down from the previous day’s settlement price. Options do not have individual price limits but rather are linked to the price limit of Futures. See *id.* at 6 n.10.

an investment in cleared Financial Instruments is unavailable, then a Fund would invest in other Financial Instruments, including uncleared Financial Instruments in the OTC market. The Funds may also invest in Financial Instruments if the market for a specific Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or disruptions (e.g., a trading halt) that prevent or make it impractical for a Fund to obtain the appropriate amount of investment exposure using Futures Contracts.

Although each Fund, under normal market conditions, will invest substantially all of its assets in Futures Contracts, each Fund will also hold cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements) pending investment in Futures Contracts or Financial Instruments or as collateral for the Funds’ investments.

The Exchange represents that, to the extent a Fund enters into swap agreements and other OTC transactions, it will do so only with large, established and well capitalized financial institutions that meet the Sponsor’s credit quality standards and monitoring policies. The Exchange states that each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.¹⁶

The Funds do not intend to hold Futures¹⁷ through expiration, but instead intend to “roll” or close their respective positions before expiration. When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the “rolling process” of the more nearby contract would take place at a price that is lower

¹⁶ See *id.* at 7.

¹⁷ The Exchange states that out-of-the-money Options will be held to expiration and will expire worthless. According to the Exchange, Funds intend to hold in-the-money options to expiration, which would occur before the expiration of Futures. In-the-money Options are settled through receipt or delivery of Futures. With respect to Futures positions established through the Options settlement procedure, the Funds intend to close such positions by entering into simultaneous offsetting Futures positions. The effects of contango and backwardation on the price of Futures will impact the price of Options to the same degree of any change in the price of the underlying Futures. See *id.* at 7 n.11.

than the price of the more distant contract.¹⁸

The Exchange states that the Funds do not expect to have exposure to Futures Contracts and Financial Instruments greater than three times (3x) the Funds' net assets. Thus, the maximum margin held at a future commission merchant would not exceed three times the margin requirement for either Fund.¹⁹ The Exchange represents that not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the Intermarket Surveillance Group ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement ("CSSA").²⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto, is consistent with Section 6(b)(5) of the Exchange Act,²² 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 finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,²³

¹⁸ The Exchange states that this pattern of higher futures prices for longer expiration Futures is referred to as "contango." Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the "rolling process" of the more nearby contract would take place at a price that is higher than the price of the more distant contract. This pattern of higher futures prices for shorter expiration Futures is referred to as "backwardation." According to the Exchange, the presence of contango in certain Futures at the time of rolling could adversely affect a Fund with long positions, and positively affect a Fund with short positions. Similarly, the presence of backwardation in certain Futures at the time of rolling such contracts could adversely affect a Fund with short positions and positively affect a Fund with long positions. See *id.* at 7.

¹⁹ See *id.*

²⁰ See *id.* at 14.

²¹ 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).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

which sets forth Congress' finding that it is in the 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. According to the Exchange, quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). Quotation information for cash equivalents, OTC swaps and forward contracts may be obtained from brokers and dealers who make markets in such instruments. Quotation information for exchange-traded swaps will be available from the applicable exchange and major market vendors. The intraday, closing prices, and settlement prices of the Futures Contracts will be readily available from the applicable futures exchange Web sites, automated quotation systems, published or other public sources, or major market data vendors. Complete real-time data for the Futures Contracts is available by subscription through on-line information services. ICE Futures U.S. and NYMEX also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for Futures Contracts are also available on such Web sites, as well as other financial informational sources. Intraday price and closing price level information for the Benchmark will be available from major market data vendors.

The Funds' Web site, www.ProShares.com, will display the applicable end of day closing NAV. Each Fund's total portfolio composition will be disclosed each business day that the NYSE Arca is open for trading, on the Funds' Web site. The Funds' Web site will also include a form of the prospectus for the Funds that may be downloaded. The Web site will include the Shares' ticker and CUSIP information, along with additional quantitative information updated on a daily basis for each Fund.²⁴ The Web site disclosure of portfolio holdings will

²⁴ The Funds' Web site will include (1) daily trading volume, the prior business day's reported NAV and closing price, and a calculation of the premium and discount of the closing price or midpoint of the bid/ask spread at the time of NAV calculation ("Bid/Ask Price") against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price or Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters.

be made daily and will include, as applicable, (i) the name, quantity, value, expiration and strike price of Futures and Options, (ii) the counterparty to and value of swap agreements and forward contracts, and (iii) the aggregate net value of other assets (*i.e.*, Treasury securities, cash equivalents and cash) held in each Fund's portfolio, if applicable.

The Benchmark will be disseminated by one or more major market data vendors every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. Eastern Time ("E.T."). The Indicative Fund Value ("IFV")²⁵ per Share will be widely disseminated by one or more major market data vendors every 15 seconds during the Exchange's Core Trading Session.²⁶ The Funds will compute their NAVs at 2:30 p.m. E.T., which is the designated closing time of the crude oil futures listed on NYMEX,²⁷ or an earlier time as set forth on www.ProShares.com, if necessitated by the New York Stock Exchange LLC, the Exchange, or other exchange material to the valuation or operation of such Fund closing early. The NAV for the Shares will be disseminated daily to all market participants at the same time.

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. If the Exchange becomes aware that the NAV with respect to the Shares is not

²⁵ The IFV will be calculated by using the prior day's closing NAV per Share of a Fund as a base and will be updating throughout the Exchange's Core Trading Session to reflect changes in the approximate aggregate per Share value of the investments held by a Fund based on the most recently available prices for the Fund's investments. According to the Exchange, there may be times when trading in the Shares is occurring during the NYSE Arca Core Trading Session, but trading in Futures is not occurring. This may occur when, for example, a futures exchange and NYSE Arca have different holiday schedules, a futures exchange closes prior to the close of the NYSE Arca Core Trading Session, price fluctuation limits are reached in Futures, or a futures exchange imposes any other suspension or limitation on trading in Futures. In such instances, the IFV would be static or priced at the applicable early cut-off time of the exchange trading the applicable Futures. See Amendment No. 1, *supra* note 5, at 9; Amendment No. 4, *supra* note 8.

²⁶ The Exchange notes that several major market data vendors display and/or make widely available IFVs taken from the CTA or other data feeds. See Amendment No. 1, *supra* note 5, at 9 n.13.

²⁷ The Exchange states that the daily value of the Benchmark is calculated as of 2:30 p.m. E.T. to coincide with the designated closing time. Futures Contracts, however, continue to trade past 2:30 p.m. E.T. and through the end of the NYSE Arca Core Trading Session at 4:00 p.m. E.T. See *id.* at 8 n.12.

disseminated to all market participants at the same time, it 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 of the IFV or the value of the Benchmark occurs. If the interruption to the dissemination of the IFV or the value of the Benchmark 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. Trading in Shares of a Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.²⁸ Moreover, trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (“ETP”) Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance.

The Commission notes that the Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and certain Futures Contracts with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and certain Futures Contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and certain Futures Contracts from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA.²⁹ The Exchange is also able to obtain information regarding trading in the Shares, the physical commodities underlying Futures Contracts through ETP Holders, in connection with such ETP Holders’ proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market surveillance information, including customer identity

information, with respect to transactions (including transactions in Futures Contracts) occurring on US futures exchanges, which are members of the ISG.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities. In support of this proposal, the Exchange represented that:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.200.

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

(3) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws, and these 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 federal securities laws applicable to trading on the Exchange.

(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 Early and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (b) the procedures for purchases and redemptions of Shares in Creation Units (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) how information regarding the IFV is disseminated; (e) how information regarding portfolio holdings is disseminated; (f) 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 (g) trading information.

(5) For initial and continued listing, each Fund will be in compliance with Rule 10A–3 under the Act,³⁰ as provided by NYSE Arca Equities Rule 5.3.

(6) Each Fund will seek to achieve its respective investment objective by

investing, under normal market conditions, substantially all of its assets in Futures Contracts.” In the event position, price or accountability limits are reached with respect to Futures Contracts, each Fund may obtain exposure to the Benchmark through investments in Financial Instruments. To the extent that a Fund invests in Financial Instruments, it would first make use of exchange-traded Financial Instruments, if available. If an investment in exchange-traded Financial Instruments is unavailable, then a Fund would invest in Financial Instruments that clear through derivatives clearing organizations that satisfy the Trust’s criteria, if available. If an investment in cleared Financial Instruments is unavailable, then a Fund would invest in other Financial Instruments, including uncleared Financial Instruments in the OTC market.

(7) Not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts shall consist of Futures Contracts whose principal market is not a member of the ISG or is a market with which the Exchange does not have a CSSA.

(8) To the extent a Fund enters into swap agreements and other OTC transactions, it will do so only with large, established and well capitalized financial institutions that meet the Sponsor’s credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.

(9) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in this filing regarding (a) the description of the portfolios of the Funds or Benchmark, (b) limitations on portfolio holdings or the Benchmark, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing

²⁸ See *id.* at 14.

²⁹ For a list of the current members of ISG, see www.isgportal.org. According to the Exchange, not all components of a Fund may trade on markets that are members of ISG or with which the Exchange has in place a CSSA. See *id.* at 13 n.18.

³⁰ 17 CFR 240.10A–3.

requirements.³¹ If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in Amendment Nos. 1, 3, and 4. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 3, and 4 thereto, is consistent with Section 6(b)(5) of the Act³² 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 Exchange Act,³³ that the proposed rule change (SR-NYSEArca-2017-07), as modified by Amendment Nos. 1, 3, and 4 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80300; File No. SR-CTA/CQ-2017-02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Twenty-Second Charges Amendment to the Second Restatement of the CTA Plan and the Thirteenth Charges Amendment to the Restated CQ Plan

March 23, 2017.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 608 thereunder,² notice is hereby given that on March 2, 2017, the Consolidated Tape Association ("CTA") Plan participants ("Participants")³ filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Second Restatement of the CTA Plan and the Restated Consolidated Quotation ("CQ") Plan ("Plans").⁴ These amendments represent the twenty-second Charges Amendment to the CTA Plan and the thirteenth Charges Amendment to the CQ Plan ("Amendments"). The Amendments seek to amend the Plans' fee schedule as well as the non-display use policy to clarify the applicability on the non-display fee, the device fee, and the access fee.

The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ *The Participants are:* BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, Investors' Exchange LLC, NASDAQ OMX BX, Inc., NASDAQ OMX PHLX, Inc., Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.

⁴ See Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a "transaction reporting plan" under Rule 601 under the Act, 17 CFR 242.601, and a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a "national market system plan" under Rule 608 under the Act, 17 CFR 242.608.

I. Rule 608(a)

A. Purpose of the Amendments

1. Background

In October 2014, the Participants amended the Plans' fee schedules to establish fees for non-display uses of data and to reduce the device fees assessed on professional subscribers.⁵ In so doing, the Participants determined that such a change provided an equitable allocation of fees to the industry that would reflect the value of non-display data usage (subject to the non-display fees) versus display data usage (subject to the lower device fees). At that time, non-display use was defined as consisting of accessing, processing, or consuming real-time Network A or Network B quotation information or last sale price information, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of a data recipient's display or further internal or external distribution. The Participants established three categories of non-display uses of market data:

- Category 1 applies when a data recipient makes non-display uses of real-time market data on its own behalf.
- Category 2 applies when a data recipient makes non-display uses of real-time market data on behalf of its clients.
- Category 3 applies when a data recipient makes non-display uses of real-time market data for the purpose of internally matching buy and sell orders within an organization.

Data recipients can be charged for each of the three categories of non-display uses. Category 3 is the only non-display fee that can be charged multiple times; a data recipient would be charged for each ATS, exchange, or ECN operated by the data recipient. In the October 2014 Non-Display Filing, the Participants also provided the following non-exhaustive list of examples of non-display use:

- Any trading in any asset class;
- Automated order or quote generation and/or order pegging;
- Price referencing for algorithmic trading;
- Price referencing for smart order routing;
- Operations control programs;
- Investment analysis;
- Order verification;
- Surveillance programs;
- Risk management;
- Compliance; and
- Portfolio valuation.

⁵ See Securities Exchange Act Release No. 73278 (October 1, 2014), 79 FR 60536 (October 7, 2014) ("October 2014 Non-Display Filing").

³¹ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428 (April 7, 2016) (Notice of Filing of Amendment No. 2, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the SPDR DoubleLine Short Duration Total Return Tactical ETF of the SSGA Active Trust), available at: <http://www.sec.gov/rules/sro/bats/2016/34-77499.pdf>. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

³² 15 U.S.C. 78f(b)(5).

³³ 15 U.S.C. 78s(b)(2).

³⁴ 17 CFR 200.30-3(a)(12).