

### *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 not necessary or appropriate in furtherance of the purposes of the Act.

The proposed changes to the Exchange's rebate programs are intended to attract additional order flow to ISE. The Exchange believes that the proposal will enhance the competitiveness of the ISE relative to other options exchanges.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,<sup>27</sup> and Rule 19b-4(f)(2)<sup>28</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i)

Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2018-27 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-ISE-2018-27. 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 website (<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 website 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-ISE-2018-27 and should be submitted on or before May 2, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Eduardo A. Aleman,**  
*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[**Securities Act of 1933 Release No. 33-10476/April 5, 2018; Securities Exchange Act of 1934 Release No. 34-82997/April 5, 2018**]

### **Order Regarding Review of FASB Accounting Support Fee for 2018 Under Section 109 of the Sarbanes-Oxley Act of 2002**

The Sarbanes-Oxley Act of 2002 (the "Act") provides that the Securities and Exchange Commission (the "Commission") may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard setting body that meets certain criteria. Consequently, Section 109 of the Act provides that all of the budget of such a standard setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the "recoverable budget expenses" of the standard setting body. Section 109(h) amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board ("FASB") and its parent organization, the Financial Accounting Foundation ("FAF"), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as "generally accepted" under Section 108 of the Act.<sup>1</sup> As a consequence of that recognition, the Commission undertook a review of the FASB's accounting

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>28</sup> 17 CFR 240.19b-4(f)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> Financial Reporting Release No. 70.

support fee for calendar year 2018.<sup>2</sup> In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2018.

Section 109 of the Act also provides that the standard setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (“GASB”), the FASB’s sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (“OMB”) has determined the FASB’s spending of the 2018 accounting support fee is sequestrable under the Budget Control Act of 2011.<sup>3</sup> So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

The Commission requests that the FAF and the FASB continue to provide the Commission with quarterly updates of their activities, including but not limited to their efforts to include a wide-range of views from investors, preparers, auditors, academics, and other constituent groups, and their efforts to improve the selection process for FASB and FAF members.

After its review, the Commission determined that the 2018 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Act, that the FASB may act in accordance with this determination of the Commission.

<sup>2</sup> The Financial Accounting Foundation’s Board of Trustees approved the FASB’s budget on November 14, 2017. The FAF submitted the approved budget to the Commission on November 17, 2017.

<sup>3</sup> See “OMB Report Pursuant to the Sequestration Transparency Act of 2012” (P.L. 112–155), page 222 of 224 at: [http://www.whitehouse.gov/sites/default/files/omb/assets/legislative\\_reports/stareport.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/stareport.pdf).

By the Commission.

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83000; File No. SR–NYSEArca–2018–17]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the ProShares Short VIX Short-Term Futures ETF and ProShares Ultra VIX Short-Term Futures ETF

April 5, 2018.

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 March 23, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 make changes to certain representations made in the proposed rule change previously filed with the Commission pursuant to Rule 19b–4 relating to ProShares Short VIX Short-Term Futures ETF and ProShares Ultra VIX Short-Term Futures ETF, shares of which currently are listed and traded under NYSE Arca Rule 8.200–E, Commentary .02. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of 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 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

<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.

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 the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Commission has approved the listing and trading on the Exchange of shares (“Shares”) of the ProShares Short VIX Short-Term Futures ETF (the “Short Fund”) and ProShares Ultra VIX Short-Term Futures ETF (the “Ultra Fund” and, together with the Short Fund, the “Funds”) under NYSE Arca Rule 8.200–E, Commentary .02 (formerly NYSE Arca Equities Rule 8.200, Commentary .02), which governs the listing and trading of Trust Issued Receipts.<sup>4</sup> Shares of the Funds are currently listed and traded on the Exchange under NYSE Arca Rule 8.200–E, Commentary .02.<sup>5</sup> Other than Shares of the Short Fund and the Ultra Fund, shares of the ProShares ETFs approved for listing and trading in the Prior Order are not listed and traded on the Exchange.<sup>6</sup>

The Shares are issued by ProShares Trust II (the “Trust”). ProShare Capital Management LLC (“Sponsor”) serves as the Trust’s Sponsor.

In this proposed rule change, the Exchange proposes to amend certain representations made in the Prior Notice relating to each Fund’s investment

<sup>4</sup> Commentary .02 to NYSE Arca Rule 8.200–E applies to TIRs that invest in “Financial Instruments”. The term “Financial Instruments”, as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200–E, 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.

<sup>5</sup> The Commission previously approved the listing and trading of the Shares of the Funds on the Exchange. See Securities Exchange Act Release Nos. 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR–NYSEArca–2011–23) (Order Granting Approval of Proposed Rule Change To List and Trade Shares of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF Under NYSE Arca Equities Rule 8.200, Commentary .02) (the “Prior Order”); 64470 (May 11, 2011), 76 FR 28493 (May 17, 2011) (SR–NYSEArca–2011–23) (Notice of Filing of Proposed Rule Change To List and Trade Shares of the Funds Under NYSE Arca Equities Rule 8.200, Commentary .02.) (the “Prior Notice”).

<sup>6</sup> On February 28, 2018, the Exchange appended a “.BC” (below compliance) indicator to the trading symbols for the Funds (SVXY for the Short Fund and UVXY for the Ultra Fund), signifying non-compliance with certain representations in the Prior Notice and Prior Order.