SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade the Shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF Under NYSE Arca Rule 8.200–E

July 31, 2019.

I. Introduction

On January 28, 2019, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) or “Exchange Act” and Rule 19b–4 thereunder, a proposed rule change to list and trade shares (“Shares”) of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF (individually, “Fund,” and collectively, “Funds”) under NYSE Arca Equities Rule 8.200–E. The proposed rule change was published for comment in the Federal Register on February 15, 2019.1

On March 26, 2019, pursuant to Section 19(b)(2) of the Act,2 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.3 On May 15, 2019, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act 7 to determine whether to approve or disapprove the proposed rule change.4 In the Order Instituting Proceedings, the Commission solicited comments on specified matters related to the proposal.5 On June 26, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.6 The Commission has received no comments on the proposal. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange’s Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to list and trade the Shares of each Fund under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.7 Each Fund is a series of the ProShares Trust II (“Trust”), a Delaware statutory trust.8 The Trust and the Funds are managed and controlled by ProShare Capital Management LLC (“ProShare Capital” or “Sponsor”). ProShare Capital is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association. The Bank of New York Mellon will be the custodian, transfer agent, and administrator for the Funds. SEI Investments Distribution Co. will serve as distributor for the Funds.

Overview of the Funds

The investment objective of the ProShares UltraPro 3x Natural Gas ETF is to seek daily 9 investment results (before fees and expenses) that correspond to three times (3x) the performance of the Bloomberg Natural Gas Subindex (“Benchmark”). The investment objective of the ProShares UltraPro 3x Short Natural Gas ETF is to seek daily investment results (before fees and expenses) that correspond to three times the inverse (-3x) of the performance of the Benchmark. The Benchmark is intended to reflect the performance of a rolling position in natural gas futures contracts listed on the New York Mercantile Exchange (“NYMEX,” which is part of the CME Group, Inc.), without regard to income earned on cash positions.

Investments of the Funds

In seeking to achieve the Funds’ investment objectives, ProShare Capital will utilize a mathematical approach to determine the type, quantity, and mix of investment positions that ProShare Capital believes, in combination, should produce daily returns consistent with the Funds’ respective objectives. Each Fund will seek to meet its respective investment objective by investing, under normal market conditions,10 in NYMEX-
listed futures contracts and NYMEX-listed options on such futures contracts (collectively, “Futures Contracts”).

The Funds will not invest directly in natural gas. The Funds’ investments in Futures Contracts will be used to produce economically “leveraged” or “inverse leveraged” investment results for the Funds.

Each Fund may, to a lesser extent and in view of regulatory requirements and/or market conditions, obtain exposure to the Benchmark through investment in over-the-counter (“OTC”) swaps and forward contracts based on such Benchmark (“Financial Instruments”). A Fund may invest in Financial Instruments: (i) If position, price or accountability limits are reached with respect to Futures Contracts; (ii) if margin requirements or exposure limits are reached with a particular futures commission merchant; (iii) 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., trading halt or “flash crash”); (iv) to maintain or increase portfolio diversification or liquidity or to obtain more favorable pricing; (v) to mitigate credit risk or exposure; or (vi) if the Sponsor deems it impractical or otherwise not in the best interest of a Fund to buy or sell Futures Contracts (such as during periods of market volatility or illiquidity).

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.

In addition, 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.

The Funds do not intend to hold Futures Contracts through expiration, but instead intend to “roll” or close their respective positions before expiration. 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. The Exchange further represents that not more than 10% of the net assets of a Fund in the aggregate invested in Futures Contracts will 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”).

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. In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, 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 also 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, 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. Quotation information for cash equivalents and OTC Financial Instruments 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 websites, 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 online 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 fee of charge on their respective websites. The specific contract specifications for Futures Contracts are also available on such websites, as well as other financial informational sources. Intra-day price and closing price level information for the Benchmark will be available from major market data vendors.

The Funds’ website will display the applicable end of day closing net asset value (“NAV”). The daily holdings of each Fund will be available on the Funds’ website. The Funds’ website will also include a form of the prospectus for the Funds that may be downloaded. The website will include the Shares’ ticker and CUSIP information, along with

18 According to the Exchange, a Futures Contract is a standardized contract traded on, or subject to the rules of, an exchange that calls for the future delivery of a specified quantity and type of a particular underlying asset at a specified time and place or alternatively may call for cash settlement. The notional size and calendar term Futures Contracts on a particular underlying asset are identical and are not subject to any negotiation, other than with respect to price and the number of contracts traded between the buyer and seller.

19 Natural gas futures contracts listed on NYMEX have significant volume and open interest. Year-to-date (as of 3/27/19) average daily dollar volume of the first and second month contracts combined is over $6 billion per day and current open is over $10 billion.

20 Market conditions that the Sponsor currently anticipates could cause a Fund to invest in Financial Instruments include, among others, conditions where the Sponsor believes the use of Financial Instruments would allow a Fund to obtain greater liquidity or more favorable pricing.

21 According to the Exchange, many designated contract markets, such as the NYMEX, 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 may hold. In addition, NYMEX also sets price fluctuation limits on futures contracts. Options do not have individual price limits but rather are linked to the price limit of Futures Contracts.
market data vendors during the NYSE Arca Core Trading Session. 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 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–E 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. Moreover, trading of the Shares will be subject to NYSE Arca Equities Rule 8.200–E, 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. 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–E.

(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

23 The Funds’ website 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 discount 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 months.

24 The daily closing value of the Benchmark is calculated as of 2:30 p.m. E.T. to coincide with the designated settlement time of the natural gas futures listed on NYMEX. These contracts generally trade 23 hours a day, 18 hours of which are traded between 9:30 a.m. to 4:00 p.m. E.T. with a 60-minute break each day beginning at 5:00 p.m. E.T. The Fund’s Indicative Fund Value (“IFV”) is updated to reflect the price of these contracts up until 4:00 p.m.
and/or market conditions, obtain exposure to the Benchmark through investment in OTC Financial Instruments. A Fund may invest in Financial Instruments: (i) If position, price or accountability limits are reached with respect to Futures Contracts; (ii) if margin requirements or exposure limits are reached with a particular futures commission merchant; (iii) if the market for a specific futures contract experiences emergencies (e.g., natural disaster, terrorist attack or an act of God) or dislocations (e.g., trading halt or “flash crash”); (iv) to maintain or increase portfolio diversification or liquidity or to obtain more favorable pricing; (v) to mitigate credit risk or exposure; or (vi) if the Sponsor deems it impractical or otherwise not in the best interest of a Fund to buy or sell Futures Contracts (such as during periods of market volatility or illiquidity).

(10) The Funds do not expect to have exposure to Futures Contracts and Financial Instruments greater than three times (3x) the Fund’s net assets as of the time the NAV is calculated.

(11) 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.

(12) 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.

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

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act 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, and the proposed rule change (SR–NYSEArca—2019–02), as modified by Amendment No. 1, be, and it hereby is, approved.

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

Jill M. Peterson,
Assistant Secretary.

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28 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/fin/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 Funds’ 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 See supra note 17 and accompanying text.

33 See supra note 18 and accompanying text.