

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-63635; File No. SR-NYSEArca-2010-103)

January 3, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the Jefferies S&P 500[®] VIX Short-Term Futures ETF

I. Introduction

On November 9, 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 Jefferies S&P 500[®] VIX Short-Term Futures ETF (“Fund”) of the ProShares Trust II (“Trust”) under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the Federal Register on November 29, 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 Fund under NYSE Arca Equities Rule 8.200, Commentary .02.⁴ The Fund, which is a commodity pool and a Delaware

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 63349 (November 19, 2010), 75 FR 73145 (“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.

statutory trust,⁵ seeks to track changes, whether positive or negative, in the level of the S&P 500 VIX Short-Term FuturesTM Index ER (“VIX Futures Index” or “Index”) over time.⁶ The Fund will pursue its investment objective primarily by maintaining long futures positions corresponding to the futures contracts underlying the VIX Futures Index (“VIX Futures Contracts”) which trade on the CBOE Futures Exchange (“CFE”), with an aggregate notional amount equal to the Fund’s total capital. In certain circumstances, as described below, the Fund may invest in one or more forward agreements or swaps (“Futures-Linked Investments”). The Fund is also intended to reflect the excess, if any, of its interest income from its investment in U.S. Treasury bills, generally with a maturity of less than one year, and other high credit quality short-term fixed-income securities, over its expenses.

Jefferies Commodity Investment Services, LLC, a Delaware limited liability company, is the Fund’s promoter, and will serve as Managing Owner of the Fund. The Managing Owner will serve as the commodity pool operator and commodity trading advisor of the Fund. The Managing Owner is registered as a commodity pool operator and commodity trading advisor with the Commodity Futures Trading Commission and is a member of the National Futures Association. The Bank of New York Mellon (“Administrator”) will be the administrator, custodian and transfer agent of the Fund.

The Index is designed to provide an exposure to one or more maturities of futures contracts on the CBOE Volatility Index (“Volatility Index”), which reflect implied volatility in

⁵ The Fund has filed a Pre-Effective Amendment No. 3 to its Registration Statement on Form S-1 under the Securities Act of 1933, dated August 17, 2010 (File No. 333-166283) (“Registration Statement”).

⁶ The VIX Futures Index, which is the excess return version of the S&P 500 VIX Short-Term FuturesTM Index, was created by Standard & Poor’s Financial Services, LLC (“Index Sponsor”).

the S&P 500[®] Index at various points along the volatility forward curve.⁷ The Volatility Index is calculated based on the prices of put and call options on the S&P 500[®] Index. The VIX Futures Index is intended to reflect the returns that are potentially available through an unleveraged investment in the relevant futures contract or contracts on the Volatility Index. The VIX Futures Index measures the return from a daily rolling long position in the first and second month VIX Futures Contracts, targeting a constant weighted average futures maturity of one month. The Fund will acquire and roll long positions in the first and second month VIX Futures Contracts with a view to tracking the level of the Index over time. The Fund will both roll and rebalance its holdings of VIX Futures Contracts in a manner consistent with the method described in the Registration Statement.

As stated earlier, the Fund seeks to achieve its investment objective by investing under normal market conditions in VIX Futures Contracts. In the event the Fund reaches its position accountability rules with respect to VIX Futures Contracts, the Managing Owner, may, in its commercially reasonable judgment, cause the Fund to invest in a Futures-Linked Investment referencing the particular VIX Futures Contracts, or invest in other futures contracts or a Futures-Linked Investment not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the VIX Futures Index or any VIX

⁷ The Volatility Index is a benchmark index designed to estimate expected volatility in large cap U.S. stocks over 30 days in the future by averaging the weighted prices of certain put and call options on the S&P 500[®] Index. During periods of market instability, the implied level of volatility of the S&P 500[®] Index typically increases and, consequently, the prices of options linked to the S&P 500[®] Index typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the level of the Volatility Index to increase. Because the Volatility Index may increase in times of uncertainty, the Volatility Index is commonly known as the “fear gauge” of the broad U.S. equities market. The Volatility Index has historically had negative correlations to the S&P 500[®] Index. The Exchange states that the Fund is not linked to the Volatility Index, and the value of the Index and the Shares may diverge significantly from the Volatility Index.

Futures Contract and will further the investment objective of the Fund.⁸ The Fund may also invest in Futures-Linked Investments 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 or a flash crash) to prevent the Fund from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contract directly or other futures contract.⁹

The Fund does not intend to outperform the Index and is not “managed” by traditional methods, which typically involve effecting changes in the composition of the Fund’s portfolio on the basis of judgments relating to economic, financial, and market considerations with a view to obtaining positive results under all market conditions. The Managing Owner will seek to cause the net asset value (“NAV”) of the Fund to track the Index during periods in which the Index is flat or declining as well as when the Index is rising.

Additional information regarding the Fund and the Shares, the VIX Futures Index and underlying VIX Futures Contracts, the Volatility Index, 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.¹⁰

III. Discussion and Commission’s Findings

The Commission has carefully reviewed the proposed rule change and finds that it is

⁸ To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house.

⁹ The Managing Owner will also attempt to mitigate the Fund’s credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Managing Owner will take various steps to limit counterparty credit risk, as described in the Registration Statement.

¹⁰ See Notice and Registration Statement, supra notes 3 and 5.

consistent with the requirements of Section 6 of the Act¹¹ and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹³ 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,¹⁴ 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. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. In addition, the Index Sponsor will publish the intra-day level of the VIX Futures Index updated every 15 seconds during the NYSE Arca Core Trading Session of 9:30 a.m. to 4:00 p.m. Eastern Time ("ET") on the consolidated tape, Reuters and/or Bloomberg. The Index Sponsor will also publish the daily closing level of the VIX Futures Index as of the close of the

¹¹ 15 U.S.C. 78f.

¹² 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).

¹³ 17 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

NYSE Arca Core Trading Session.¹⁵ The level of the Volatility Index as calculated by CBOE, updated every 15 seconds from 9:30 a.m. to 4:15 p.m. ET, is disseminated on the CBOE website at www.cboe.com and through major market data vendors. An updated Indicative Trust Value (“ITV”) will be calculated using the prior day’s closing NAV per share of the Fund as a base and updating that value throughout the NYSE Arca Core Trading Session each trading day to reflect current changes in the value of VIX Futures Contracts held by the Fund, as well as the value of any swap or forward contracts and other futures contracts held by the Fund. The ITV will be disseminated on a per-Shares basis by one or more major market data vendors every 15 seconds. Further, the Fund will provide website disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of VIX Futures Contracts, Futures-Linked Investments, and other futures contracts, if any, and characteristics of such investments and cash equivalents, and amount of cash held in the portfolio of the Fund. The closing prices and settlement prices of VIX Futures Contracts are available from the websites of the CFE, automated quotation systems, published or other public sources, and on-line information services such as Bloomberg or Reuters.¹⁶ The specific contract specifications for VIX Futures Contracts are also available on those websites, 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 website. The NAV for the Fund will be calculated by the Administrator once a day at or after 4:15 p.m. ET and will be disseminated to all market participants at the same time. The Exchange will make available on its website daily trading volume of the Shares, closing prices of the Shares, and number of Shares outstanding.

¹⁵ The Fund’s website will display the end-of-day closing Index levels and NAV.

¹⁶ Complete real-time data for VIX Futures Contracts is available by subscription from Reuters and Bloomberg.

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 website disclosure of the portfolio composition of the Fund will occur at the same time as the disclosure by the Managing Owner 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 ITV, the VIX Futures Index, the Volatility Index, or the value of the underlying 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.¹⁷ 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 the Index Sponsor has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index.

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

¹⁷ 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.

proposal, the Exchange has made representations, including:

- (1) The Fund 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. In addition, with respect to Fund components traded on exchanges, not more than 10% of the weight of such components in the aggregate will consist of components whose principal trading market is not a member of the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (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 ITV 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) how information regarding the ITV is disseminated; (e) 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 (f) trading information.

- (5) With respect to the application of Rule 10A-3 under the Act,¹⁸ the Trust relies on the exception contained in Rule 10A-3(c)(7).¹⁹
- (6) A minimum of 100,000 Shares of the Fund will be outstanding as of the start of trading on the Exchange.

This approval order is based on the Exchange's representations.²⁰

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²¹ 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,²² that the

¹⁸ 17 CFR 240.10A-3.

¹⁹ 17 CFR 240.10A-3(c)(7).

²⁰ The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the CFTC. The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC, or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures, even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78s(b)(2).

proposed rule change (SR-NYSEArca-2010-103), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Elizabeth M. Murphy
Secretary

²³ 17 CFR 200.30-3(a)(12).