

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-64464; File No. SR-NYSEArca-2011-24)

May 11, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change to List and Trade Shares of the Following under NYSE Arca Equities Rule 8.200: ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on April 28, 2011, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 list and trade shares of the following under NYSE Arca Equities Rule 8.200: ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas. The text of the proposed rule change is available at the Exchange, the Commission’s Public Reference Room, and [www.nyse.com](http://www.nyse.com).

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 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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts (“TIRs”) either by listing or pursuant to unlisted trading privileges (“UTP”).<sup>3</sup> The Exchange proposes to list and trade shares (“Shares”) of the following pursuant to NYSE Arca Equities Rule 8.200: ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas (each a “Fund” and, collectively, the “Funds”).<sup>4</sup> Each of the Funds is a series of the ProShares Trust II (“Trust”), a Delaware statutory trust. ProShare Capital Management LLC (“Sponsor”) is the Trust’s Sponsor, and Wilmington Trust Company is the Trust’s trustee. Brown Brothers Harriman & Co. (“Administrator”) serves as the administrator, custodian and transfer agent of the Funds. SEI Investments Distribution Co. (“Distributor”) serves as distributor of the Shares.

The Exchange notes that the Commission has previously approved the listing and trading of other series of the Commodities and Currency Trust (now known as ProShares Trust II) both on the American Stock Exchange LLC<sup>5</sup> and on NYSE Arca pursuant to unlisted trading

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<sup>3</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to TIRs 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.

<sup>4</sup> See Post-Effective Amendment No. 1 dated May 28, 2010 (File No. 333-163511) and Post-Effective Amendment No. 4 dated April 13, 2011 (File No. 333-163511) to the Funds’ Registration Statement on Form S-3 (“Registration Statements”). The description of the Funds and the Shares contained herein are based on the Registration Statements.

<sup>5</sup> See Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39) (“Amex Proposal”).

privileges (“UTP”),<sup>6</sup> and listing on NYSE Arca.<sup>7</sup> In addition, the Commission has approved other exchange-traded investment products linked to the performance of underlying commodities.<sup>8</sup> The Exchange further notes that the shares of other ProShares UltraFunds and UltraShort Funds based on various securities indexes have previously been approved by the Commission.<sup>9</sup>

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<sup>6</sup> See Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR-NYSEArca-2008-73).

<sup>7</sup> See Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91). The series of the Trust approved for Exchange listing by the Commission included the Ultra DJ-AIG Commodity ProShares, UltraShort DJ-AIG Commodity ProShares, Ultra DJ-AIG Agriculture ProShares, UltraShort DJ-AIG Agriculture ProShares, Ultra DJ-AIG Crude Oil ProShares, UltraShort DJ-AIG Crude Oil ProShares, Ultra Gold ProShares, UltraShort Gold ProShares, Ultra Silver ProShares, UltraShort Silver ProShares, Ultra Euro ProShares, UltraShort Euro ProShares, Ultra Yen ProShares and UltraShort Yen ProShares. See also Securities Exchange Act Release No. 58647 (September 25, 2008), 73 FR 57399 (October 2, 2008) (SR-NYSEArca-2008-99) (notice of filing and immediate effectiveness relating to the names of the Trust and the funds of the Trust, among other matters).

<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR-NYSEArca-2009-28) (order granting accelerated approval for NYSE Arca listing the ETFs Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order granting accelerated approval for NYSE Arca listing the ETFs Gold Trust); 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (order approving listing on NYSE Arca of the ETFs Platinum Trust); 61220 (December 22, 2009), 74 FR 68895 (December 29, 2009) (order approving listing on NYSE Arca of the ETFs Palladium Trust).

<sup>9</sup> See Securities Exchange Act Release Nos. 52553 (October 3, 2005), 70 FR 59100 (October 11, 2005) (SR-Amex-2004-62) (approving the listing and trading of shares of the xtraShares Trust); 54040 (June 23, 2006), 71 FR 37629 (June 30, 2006) (SR-Amex2006-41) (approving the listing and trading of shares of the ProShares Trust); 55117 (January 17, 2007), 72 FR 3442 (January 25, 2007) (SR-Amex 2006-101) (approving the listing and trading of shares of the ProShares Trust); 56592 (October 1, 2007), 72 FR 57364 (October 9, 2007) (SR-Amex -2007-60) (approving the listing and trading of 6 funds of the ProShares Trust based on international equity indexes); and 56998 (December 19, 2007), 72 FR 73404 (December 27, 2007) (SR-Amex-2007-104) (approving the listing and trading of shares of the ProShares Trust).

According to the Registration Statements, the Funds seek daily investment results (before fees and expenses) that correspond to the inverse (opposite) of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of the benchmark index for each of the Funds (the “Benchmark” or “Index”), the Dow Jones-UBS Natural Gas Sub-Index.<sup>10</sup>

The Index is comprised of New York Mercantile Exchange (“NYMEX”) Natural Gas futures contracts (“Natural Gas Futures Contracts”).<sup>11</sup> The Index is intended to reflect the

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<sup>10</sup> CME Group Index Services LLC (“CME Indexes”), a joint venture between Dow Jones & Company, Inc. (“Dow Jones” or “Index Provider”) and CME Group Inc. (“CME Group”), and UBS Securities LLC (“UBS”) have entered into a non-exclusive license agreement providing for the use of the Index in connection with the Funds.

UBS, a co-sponsor of the Index, is a registered broker-dealer and has represented to the Exchange that it will: (1) implement and maintain procedures reasonably designed to prevent the use and dissemination by relevant personnel of UBS, in violation of applicable laws, rules, and regulations, of material non-public information relating to changes in the composition or method of computation or calculation of the Index; and (2) periodically review the requirements of such procedures as they relate to certain personnel of UBS directly responsible for such changes.

CME Indexes, a co-sponsor of the Index, is not engaged in the business of trading in commodities or securities. CME Group, together with its subsidiaries, operates derivatives exchanges. CME Group maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information obtained during the course of one’s employment and the use or disclosure of any material non-public information relating to changes to the composition of the Index or changes to the Index methodology in violation of applicable laws, rules or regulations. For a transitional period, certain Dow Jones employees are providing index-related services to CME Indexes. Dow Jones also maintains a Code of Conduct applicable to all personnel that prohibits disclosure of any confidential information relating to changes to the composition of the Index or changes to the Index methodology obtained during the course of one’s employment and the use of any material non-public information in violation of applicable laws, rules or regulations.

<sup>11</sup> Natural gas futures volume on NYMEX for 2009 and 2010 (through December 31, 2010) was 47,864,639 contracts and 64,350,673 contracts, respectively. As of December 31, 2010, NYMEX open interest for all natural gas futures was 772,104 contracts, and the approximate value of all outstanding contracts was \$35,664,257,310 billion. Open interest as of December 31, 2010 for the near month contract was 166,757 contracts and the near month contract value was \$7,345,645,850 (\$4.405 per MMBtu and 10,000

performance of natural gas as measured by the performance of Natural Gas Futures Contracts, including roll costs, without regard to income earned on cash positions. It rolls (or sells its existing position prior to settlement while purchasing a new position further from settlement) the component Natural Gas Futures Contracts every other month as follows in the table below. The roll for each Index component occurs over a period of five NYMEX business days.

Month	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Component	Mar	Mar	May	May	Jul	Jul	Sep	Sep	Nov	Nov	Jan	Jan
Natural Gas Contract												

The Funds will utilize Natural Gas Futures Contracts and, under limited circumstances, swap agreements, as described below, to produce economically “inverse,” “leveraged,” and “inverse leveraged” investment results for the respective Funds.<sup>12</sup> For each dollar invested in the Funds, each Fund will seek the requisite exposure in Natural Gas Futures Contracts to pursue its respective investment objective. The Sponsor does not intend to invest directly in any commodity.

According to the Registration Statements, each of the Funds uses investment techniques that include the use of any one or a combination of Natural Gas Futures Contracts, and may

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MMBtu per contract). The position accountability limits for all months is 12,000 contracts and the total value of contracts if position accountability limits were reached would be approximately \$528,600,000 million (based on the \$4.405 contract price). As of December 31, 2010, open interest in natural gas swaps cleared on the NYMEX was approximately 1,493,013 contracts, with an approximate value of \$16,463,384,003 (\$4.411 per MMBtu and 2,500 MMBtu per contract). Natural gas futures are also traded on ICE Futures Europe (“ICE”) and the European Energy Exchange.

<sup>12</sup> Terms relating to the Funds, the Shares and the Index referred to, but not defined, herein are defined in the Registration Statements.

include swap agreements. The Funds' investment techniques may involve a small investment relative to the amount of investment exposure assumed and may result in losses exceeding the amounts invested. Such techniques, particularly when used to create leverage, may expose the Funds to potentially dramatic changes (losses or gains) in the value of their investments and imperfect correlation between the value of the investments and the security or index.

If ProShares Short DJ-UBS Natural Gas is successful in meeting its objective, its value on a given day (before fees and expenses) should gain approximately as much on a percentage basis as its Benchmark when the Benchmark falls on a given day. Conversely, its value on a given day (before fees and expenses) should lose approximately as much on a percentage basis as the Benchmark when the Benchmark rises on a given day. If the ProShares Ultra DJ-UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it rises on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. If the ProShares UltraShort DJ-UBS Natural Gas Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately twice as much on a percentage basis as the Benchmark when it declines on a given day. Conversely, its value (before fees and expenses) should lose approximately twice as much on a percentage basis as the Benchmark when it rises on a given day.

In seeking to achieve each Fund's daily investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with a Fund's objective. The Sponsor relies upon a pre-

determined model to generate orders that result in repositioning each Fund's investments in accordance with its daily investment objectives.

A number of factors may affect a Fund's ability to achieve a high degree of correlation with its Benchmark, and there can be no guarantee that a Fund will achieve a high degree of correlation. While the Funds do not expect that their daily returns will deviate adversely from their respective daily investment objectives, several factors may affect their ability to achieve this correlation. Among these factors are a Fund's expenses, including fees, transaction costs and the cost of the investment techniques employed by that Fund, bid-ask spreads, a Fund's Share prices being rounded to the nearest cent, changes to a Benchmark that are not disseminated in advance and the need to conform a Fund's portfolio holdings to comply with investment restrictions or policies or regulatory or tax law requirements.

The Funds will obtain exposure to the Index through Natural Gas Futures Contracts. Any futures contracts held by the Funds are expected to be the Natural Gas Futures Contracts. To the extent that Dow Jones alters the construction or composition of the Index to include natural gas futures contracts that trade on a different exchange, the Funds may so invest in such futures contracts.

According to the Registration Statements, each Fund seeks to achieve its investment objective by investing under normal market conditions in Natural Gas Futures Contracts. In the event position accountability rules are reached with respect to Natural Gas Futures Contracts, the Sponsor may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps referencing the Index or particular Natural Gas Futures Contracts, or invest in other futures contracts or swaps not based on the particular Natural Gas Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the Index or any Natural

Gas Futures Contract and will further the investment objective of such Fund.<sup>13</sup> Each Fund may also invest in swaps 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) that prevent such Fund from obtaining the appropriate amount of investment exposure to the affected Natural Gas Futures Contracts directly or to other futures contracts.<sup>14</sup>

The Sponsor expects the Funds to have a statistical correlation<sup>15</sup> over time of -.95 or better (for ProShares Short DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas) and +.95 or better (for ProShares Ultra DJ-UBS Natural Gas) when correlating the daily return of a Fund's Net Asset Value ("NAV") against the daily return of its relevant Index or Benchmark.

Each Fund may also invest in cash, cash equivalents and/or U.S. Treasury Securities or other high credit quality short-term fixed-income or similar securities (such as shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes and repurchase agreements collateralized by government securities) that will serve as collateral for any futures contracts or swap agreements held by the Funds.

#### Futures Contracts Held by the Funds

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<sup>13</sup> To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

<sup>14</sup> According to the Registration Statements, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statements.

<sup>15</sup> Correlation is the strength of the relationship between (1) the change in a Fund's NAV and (2) the change in the underlying Index or Benchmark. The statistical measure of correlation is known as the "correlation coefficient." A correlation coefficient of +1 indicates a perfect positive correlation while a value of -1 indicates a perfect negative (inverse) correlation. A value of zero would mean that there is no correlation between the two variables.



All open futures contracts held by the Funds will be traded on the NYMEX and will be calculated at their then current market value, based upon the settlement price for that particular futures contract traded on the date with respect to which NAV is being determined; provided that, if a futures contract could not be liquidated on such day, due to the operation of daily limits or other rules of the exchange upon which that position is traded or otherwise, the Sponsor may in its sole discretion choose to determine a fair value price as the basis for determining the market value of such position for such day. The Sponsor will, in good faith, establish an appropriate methodology for determining such fair value prices, based on factors it deems relevant, including the prices of other instruments that provide an indication of the fair value price of the future contracts. For example, the Sponsor expects that such fair value determinations would be based on publicly traded options prices of Natural Gas Futures Contracts, if available and relevant.

#### Net Asset Value

According to the Registration Statements, the NAV of each Fund is calculated by the value of its total assets including, but not limited to, all cash and cash equivalents or other debt securities, less total liabilities, each determined on the basis of generally accepted accounting principles. In particular, the NAV includes any unrealized profit or loss on open Natural Gas Futures Contracts and swap agreements, and any other credit or debit accruing to a Fund, but unpaid or not received.

The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (i.e., the value of its total assets, less total liabilities) by its total number of Shares outstanding. Expenses and fees are accrued daily and taken into account for purposes of

determining NAV. The NAV of each Fund is calculated by the Administrator and is determined each business day as described in the Registration Statements.

#### Creation and Redemption of Shares

According to the Registration Statements, the Funds create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 50,000 Shares of a Fund. Creation Units may be created or redeemed only by Authorized Participants, as described in the Registration Statements. Except when aggregated in Creation Units, the Shares are not redeemable securities. Authorized Participants may pay a fixed and variable transaction fee in connection with each order to create or redeem a Creation Unit. Authorized Participants may sell the Shares included in the Creation Units they purchase from the Funds to other investors. On any business day, an Authorized Participant may place an order with the Distributor to create one or more Creation Units. An order to create or redeem Shares must be placed by 1:30 p.m. Eastern Time (“E.T.”). The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of the applicable Fund on the purchase order date plus the applicable transaction fee.

According to the Registration Statements, the procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the creation of Creation Units. On any business day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. Individual shareholders may not redeem directly from a Fund.

By placing a redemption order, an Authorized Participant agrees to deliver the Creation Units to be redeemed through the Depository Trust Company’s book-entry system to the applicable Fund not later than noon E.T., on the third business day immediately following the

redemption order date (T+3). The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of such Fund requested in the Authorized Participant's redemption order as of the time of the calculation of such Fund's NAV on the redemption order date, less transaction fees, as described in the Registration Statements.

#### Availability of Information Regarding the Shares

The website for the Funds ([www.proshares.com](http://www.proshares.com)) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV per Share; (b) calculation of the premium or discount of the closing market price against the NAV per Share; (c) the Prospectus; and (d) other applicable quantitative information.

The NAV per Share will be calculated and disseminated daily. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the "Indicative Fund Value" (as discussed below), recent NAV per Share and Shares outstanding. The Exchange will also make available on its website ([www.nyse.com](http://www.nyse.com)) daily trading volume of the Shares, closing prices of the Shares, and the NAV per Share. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

#### Portfolio Disclosure

Each Fund's total portfolio composition will be disclosed on the Funds' website or another relevant website as determined by the Trust and/or the Exchange. The Trust will provide

website disclosure of portfolio holdings daily and will include, as applicable, the names and notional value (in U.S. dollars) of Natural Gas Futures Contracts and swap agreements, if any, cash equivalents and amount of cash held in the portfolio of each Fund. This public website disclosure of the portfolio composition of each Fund will occur at the same time as the disclosure by the Sponsor of the portfolio composition to Authorized Participants, so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public website as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of each Fund through the Funds' website, and/or at the Exchange's website.

#### Availability of Information about the Benchmarks

The daily closing Index level and the percentage change in the daily closing Index level for the Index will be publicly available on various websites, e.g., [www.bloomberg.com](http://www.bloomberg.com). The Index level will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the Exchange's Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. E.T., at which point the Index value will be static. Data regarding the Index is also available from the Index Provider to subscribers. In addition, data is available for the Natural Gas Futures Contracts in the Index and for other futures contracts from those futures exchanges that list and trade futures contracts on such commodity. Several independent data vendors also package and disseminate index data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only).

### Dissemination of Net Asset Value and Indicative Fund Value

The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants. The NAV calculation time for the Funds is 2:30 p.m. E.T.<sup>16</sup> The Exchange will obtain a representation (prior to listing of the Funds) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, the Sponsor will cause to be made available on a daily basis the total payment required to create each Creation Unit of the applicable Fund on the purchase order date in connection with the issuance of the respective Shares.

In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem the Shares, one or more major market data vendors will disseminate an updated Indicative Fund Value ("IFV"). The IFV will be disseminated on a per-Share basis at least every 15 seconds during Exchange's Core Trading Session trading hours of 9:30 a.m. to 4:00 p.m. E.T. The IFV will be calculated based on the cash required for creations and redemptions for a Fund (prior calculated NAV) adjusted to reflect the price changes of such Fund's holdings.

The value of a Share may be influenced by non-concurrent trading hours between NYSE Arca and NYMEX when the Shares are traded on NYSE Arca after normal trading hours of NYMEX. The IFV will be updated during the NYSE Arca Core Trading Session when Natural Gas Futures Contracts held by the Funds are traded. However, a static IFV will be disseminated

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<sup>16</sup> The Commission previously has approved a commodity-based trust security for which the NAV is calculated earlier than 4:00 p.m. E.T. See, e.g., Securities Exchange Act Release Nos. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR-NYSE-2004-22) (order approving listing of streetTRACKS Gold Trust; and 61219 (December 22, 2009), 74 FR 68886 (December 29, 2009) (SR-NYSEArca-2009-95) (order approving listing of ETFS Platinum Trust).

between the close of trading of Natural Gas Futures Contracts and the close of the NYSE Arca Core Trading Session.

#### Criteria for Initial and Continued Listing

The Funds will be subject to the criteria in NYSE Arca Equity Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.

The minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this anticipated minimum number of Shares for each Fund to be outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of the Funds. The Exchange represents that, for the initial and continued listing of the Shares, the Funds will be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A-3 under the Act.

#### Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

The trading of 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. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading may 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. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule<sup>17</sup> or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the Index value, IFV or the value of the underlying futures contracts occurs. If the interruption to the dissemination of the Index value, IFV or the value of the underlying futures contracts 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. 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, it will halt trading in the Shares until such time as the NAV is available to all market participants.

#### Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further,

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<sup>17</sup> See NYSE Arca Equities Rule 7.12.

the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that such ETP Holder believes would be useful to make a recommendation.

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that members must make reasonable efforts to obtain the following information: (1) the customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs (which include the Shares) and options on leveraged ETFs, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) ("FINRA Regulatory Notices"). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.



As disclosed in the Registration Statement, the Funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and the Funds do not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%) or a leveraged inverse multiple (-200%) of the period return of the Benchmark and may differ significantly from these multiples. The Exchange's Information Bulletin regarding the Funds, described below, will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

#### Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Shares. The Exchange represents that 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 applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the NYMEX, which is a member of the

Intermarket Surveillance Group (“ISG”). A list of ISG members is available at [www.isgportal.org](http://www.isgportal.org).<sup>18</sup>

In addition, with respect to the Funds’ futures contracts traded on exchanges, not more than 10% of the weight of such futures contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Bulletin

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: (1) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) 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; (4) how information regarding the IFV is disseminated; (5) a static IFV will be disseminated between the close of trading Natural Gas Futures Contracts on the NYMEX and the close of the NYSE Arca Core Trading Session; (6) the requirement that ETP Holders deliver a prospectus to investors

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<sup>18</sup> The Exchange may obtain information from futures exchanges with which the Exchange has entered into a surveillance sharing agreement or that are ISG members. The Exchange notes that not all components of the portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statements. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' website.

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)<sup>19</sup> 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,

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<sup>19</sup> 15 U.S.C. 78f(b)(5).

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 is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Any futures contracts held by the Funds are expected to be the Natural Gas Futures Contracts, which are traded on NYMEX, an ISG member. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the NYMEX, automated quotation systems, published or other public sources, or on-line information services. Quotation and last-sale information for the Shares will be available via CTA. Each Fund's total portfolio composition will be disclosed on the Funds' website or another relevant website.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. The Index level will be disseminated by one or more major market data vendors and will be updated at least every 15 seconds during the Exchange's Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. E.T., at which point the Index value will be static. The NAV per Share will be calculated daily and made available to all

market participants at the same time. One or more major market data vendors will disseminate for the Funds on a daily basis information with respect to the IFV, recent NAV per Share and Shares outstanding. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Moreover, 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. The Information Bulletin will also reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, IFV, and quotation and last-sale information for the Shares.

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 (i) as the Commission may designate up to 90 days of such date 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2011-24 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-2011-24. 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 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 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-2011-24 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Cathy H. Ahn  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).