

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-76394; File No. SR-BATS-2015-56)

November 9, 2015

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Amendments Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change to List and Trade Shares of the ProShares Managed Futures Strategy ETF of the ProShares Trust Under BATS Rule 14.11 on BATS Exchange, Inc.

I. Introduction

On July 30, 2015, BATS Exchange, Inc. (“Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares (“Shares”) of the ProShares Managed Futures Strategy ETF (“Fund”) of the ProShares Trust (“Trust”) under BATS Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on August 17, 2015.⁴ On August 19, 2015, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced the proposed rule change in its entirety.⁵ On September 4, 2015, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced the proposed rule change in its

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 75664 (August 11, 2015), 80 FR 49288.

⁵ In Amendment No. 1, the Exchange supplemented the information that will be included in the Fund’s Disclosed Portfolio, clarified the investments that the Fund may hold, clarified how certain of the Fund’s assets will be valued in calculating the Fund’s net asset value (“NAV”), and provided additional information regarding the availability of price information for the assets that the Fund may hold. All amendments to the proposed rule change are available at: <http://www.sec.gov/comments/sr-bats-2015-56/bats201556-1.pdf>.

entirety.⁶ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendments Nos. 1 and 2 from interested persons, and is approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. 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.

The Shares will be offered by the Trust, which is established as a Delaware statutory trust. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N-1A ("Registration Statement") with the Commission.⁷ ProShare Advisors LLC is the investment adviser ("Adviser") to the Fund. JPMorgan Chase Bank, National Association is the administrator, custodian, fund account agent, index receipt agent and transfer agent for the Trust. SEI Investments Distribution Co. serves as the distributor for the Trust. The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with a broker-dealer, and in the future may affiliate with other broker-dealers, and has implemented a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund's

⁶ In Amendment No. 2, the Exchange modified the description of the swaps that the Fund may hold and the availability of intraday price information for assets that the Fund may hold.

⁷ See Registration Statement on Form N-1A for the Trust, dated May 31, 2013 (File Nos. 333-98922 and 811-21114). See also Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812-14041).

portfolio.⁸ The Exchange further represents that Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio.⁹

The Exchange's Description of the Fund¹⁰

The Fund will generally seek exposure to the commodity and financial markets included in the S&P® Strategic Futures Index ("Index"),¹¹ but the Fund is not an index tracking ETF and will generally seek to enhance its performance by actively selecting investments for the Fund with varying maturities from the underlying components of the Index.

Under normal market conditions,¹² the Fund will invest at least 80% of its assets directly,

⁸ See Amendment No. 2, *supra* note 6, at 29.

⁹ See *id.* at 6; see also BATS Rule 14.11(i)(7). The Exchange also represents that in the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

¹⁰ The Commission notes that additional information regarding the Trust, the Fund, and the Shares, investment strategies, risks, NAV calculation, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, and taxes, among other information, is included in the Amendment No. 2 and Registration Statement. See *supra* notes 6 and 7, respectively.

¹¹ The Index seeks to reflect trends (in either direction) in the commodity, foreign currency and fixed income markets by taking long or short positions in the related futures contracts.

¹² The term "under normal market conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets, futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

or indirectly through ProShares Cayman Trust I (“Subsidiary”),¹³ a wholly-owned subsidiary of the Fund, in the exchange-listed futures contracts included in the Index, which include commodity futures, currency futures, and U.S. Treasury futures (collectively, “Futures Contracts”). The Fund may also invest in swaps¹⁴ 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 would prevent the Fund from obtaining the appropriate amount of investment exposure to the affected Futures Contracts or other futures contracts directly.

The Fund may also invest up to 100% of its assets in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) for direct investment or as collateral for the Futures Contracts or swap agreements. The Fund will use the fixed-income securities as investments and to meet asset coverage tests resulting from the Subsidiary’s derivative exposure on a day-to-day basis.

¹³ The Subsidiary will be advised by the Adviser and will have the same investment objective as the Fund. The Fund’s investment in the Subsidiary is intended to provide the Fund with exposure to markets (in general, the commodity markets) within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in certain Futures Contracts. Generally, references to the Fund’s investments may also be deemed to include the Fund’s indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary.

¹⁴ The Fund may invest in swap agreements whose value is derived from the level of the Benchmark, one or more Futures Contracts or from the reference assets underlying one or more of such Futures Contracts.

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.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹⁶ 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 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,¹⁷ 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 for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"). Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be generally published daily in the print and online financial press. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

¹⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

Intraday price quotations on repurchase agreements and U.S. Government securities of the type held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or “live” with a paid fee. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund.¹⁸ Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services.¹⁹ For Futures Contracts, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.²⁰

On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio Futures Contracts and other assets (“Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.²¹ In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. The Intraday Indicative Value will be based upon the current value for the

¹⁸ See Amendment No. 2, *supra* note 6, at 25.

¹⁹ See *id.*

²⁰ See *id.* at 31.

²¹ The Disclosed Portfolio will include, as applicable: ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio. The website and information will be publicly available at no charge. Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.²²

The Commission also 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 Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.²³ The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. 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 Futures Contracts and other assets composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer, and in the future may affiliate with other broker-dealers, and has implemented a fire wall with respect to such broker-dealer regarding access to information

²² It is the Exchange's current understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds. See id. at 24, n.20.

²³ See id. at 25.

concerning the composition and/or changes to the Fund’s portfolio.²⁴ The Exchange further represents that Adviser personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio.²⁵ In addition, the Commission notes that, consistent with BATS Rule 14.11(i)(4)(B)(ii)(b), the Reporting Authority, as defined in BATS Rule 14.11(i)(3)(D), must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio. The Exchange may obtain information regarding trading in the Shares and the underlying shares in exchange traded equity securities via the Intermarket Surveillance Group (“ISG”), from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.²⁶ In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA’s Trade Reporting and Compliance Engine.

In support of this proposal, the Exchange has made the following representations:

- (1) The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

²⁴ See id. at 29.

²⁵ See id. at 6.

²⁶ For a list of the current members of ISG, see www.isgportal.org. All of the Futures Contracts held by the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See id. at 27, n.22.

- (3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and that these procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.
- (4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening²⁷ and After Hours Trading Sessions²⁸ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.²⁹

²⁷ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

²⁸ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

²⁹ See 17 CFR 240.10A-3.

- (6) As it relates to futures contracts, all Futures Contracts in the Disclosed Portfolio for the Fund will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.
- (7) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments Nos. 1 and 2, is consistent with Section 6(b)(5) of the Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendments Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendments Nos. 1 and 2 are 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. Please include File Number SR-BATS-2015-56 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.

³⁰ 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-BATS-2015-56. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-56 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments Nos. 1 and 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments Nos. 1 and 2, prior to the thirtieth day after the date of publication of notice in the Federal Register. No comments were received after publication of the Notice. Amendments Nos. 1 and 2 only supplement the proposed rule change by clarifying certain points and providing additional detail. Therefore, the Commission finds good cause, pursuant to Section 19(b)(2) of

the Act,³¹ to approve the proposed rule change, as modified by Amendments Nos. 1 and 2 on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR-BATS-2015-56), as modified by Amendment Nos. 1 and 2, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Robert W. Errett
Deputy Secretary

³¹ 15 U.S.C. 78s(b)(2).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).