

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65136; File No. SR-NYSEArca-2011-24)

August 15, 2011

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a 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

I. Introduction

On April 28, 2011, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas, and ProShares UltraShort DJ-UBS Natural Gas under NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the Federal Register on May 17, 2011.³ The Commission received no comments on the proposal. On July 1, 2011, the Exchange submitted a request to extend the Commission’s action date for the proposed rule change to August 15, 2011. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares (“Shares”) of the ProShares Short DJ-UBS Natural Gas, ProShares Ultra DJ-UBS Natural Gas, and ProShares UltraShort DJ-UBS Natural Gas (each a “Fund” and, collectively, “Funds”)⁴ pursuant to NYSE Arca Equities Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 64464 (May 11, 2011), 76 FR 28483 (“Notice”).

⁴ 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

8.200, Commentary .02, which permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.⁵ 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. serves as distributor of the Shares.

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 Dow Jones-UBS Natural Gas Sub-Index, the benchmark index for each of the Funds (“Benchmark” or “Index”). The Index, which is comprised of New York Mercantile Exchange (“NYMEX”) Natural Gas futures contracts (“Natural Gas Futures Contracts”), is intended to reflect the 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. The Index 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. The roll for each Index component occurs over a period of five NYMEX business days.

Each Fund will seek to achieve its respective 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

Funds’ Registration Statement on Form S-3 (“Registration Statements”).

⁵ 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.

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.⁶ 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 would prevent such Fund from obtaining the appropriate amount of investment exposure to the affected Natural Gas Futures Contracts directly or to other futures contracts.⁷ In addition, each Fund may 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.

The Sponsor expects the Funds to have a statistical correlation⁸ over time of -0.95 or better (for ProShares Short DJ-UBS Natural Gas and ProShares UltraShort DJ-UBS Natural Gas)

⁶ To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

⁷ 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.

⁸ Correlation is the strength of the relationship between (1) the change in a Fund's net asset value ("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.

and +0.95 or better (for ProShares Ultra DJ-UBS Natural Gas) when correlating the daily return of a Fund's NAV against the daily return of its relevant Benchmark.

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.

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 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. The Sponsor does not intend to invest directly in any commodity.

The Exchange represents that the Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for the initial and continued listing of the Shares. The Exchange further 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 Act⁹ and a minimum of 100,000 Shares for each Fund will be outstanding as of the start of trading on the Exchange.

Additional details regarding the Trust, Shares, trading policies of the Fund, creations and redemptions of the Shares, Natural Gas Futures Contracts, investment risks, Benchmark performance, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statements, as applicable.¹⁰

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change to list and trade the Shares of the Funds is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section

⁹ 17 CFR 240.10A-3.

¹⁰ See Notice and Registration Statements, supra notes 3 and 4, respectively.

¹¹ 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).

6(b)(5) of the Act,¹² which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto 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,¹³ which sets forth Congress's 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 via the Consolidated Tape Association high-speed line, and 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 NYSE Arca Core Trading Session, except for that period after the end of the NYMEX Natural Gas pit trading session at 2:30 p.m. Eastern Time ("E.T."), at which point the Index value will be static.¹⁴ In addition, the Indicative Fund Value ("IFV")

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

¹⁴ The daily closing Index level and the percentage change in the daily closing Index level will be publicly available on various websites, e.g., www.bloomberg.com, and data regarding the Index will also be available from the Dow Jones & Company, Inc. to subscribers. In addition, data will be 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 data in various value-added formats (including vendors displaying both

for each Fund will be disseminated on a per-Share basis by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.¹⁵ The NAV for the Funds' Shares will be calculated by the Administrator once a day and will be disseminated daily to all market participants at 2:30 p.m. E.T. 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. The intra-day, closing, and settlement prices of the futures contracts held by the Funds are available from NYMEX, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, the website for the Funds and/or the Exchange will contain the prospectus and additional data relating to NAV and other applicable quantitative information.

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

Index constituents and Index levels and vendors displaying Index levels only).

¹⁵ 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 between the close of trading of Natural Gas Futures Contracts and the close of the NYSE Arca Core Trading Session.

such time as the NAV is available to all market participants.¹⁶ Further, the Exchange represents that it 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, the 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. The Exchange may halt trading in the Shares if trading is not occurring in the underlying futures contracts or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.¹⁷ In addition, the Exchange represents that certain parties involved with the sponsoring and/or maintenance of the Index will be subject to restrictions on the use or disclosure of any material non-public information relating to changes to the composition and/or

¹⁶ The Exchange will obtain a representation (prior to listing the Shares 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.

¹⁷ With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in the Shares of the Funds will be subject to halts caused by extraordinary market volatility pursuant to the Exchange's circuit breaker rules in NYSE Arca Equities Rule 7.12. 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 calculation of the Index.¹⁸ Lastly, 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 Holders¹⁹ acting as registered Market Makers²⁰ in Trust Issued Receipts to facilitate surveillance.

The Exchange has represented that the Shares are deemed 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 has made representations, including:

- (1) The Funds will be subject to the criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto for initial and continued listing of the Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

¹⁸ UBS Securities LLC, 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 its relevant personnel 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 of its personnel directly responsible for such changes. CME Group Index Services LLC, another co-sponsor of the Index, is not engaged in the business of trading in commodities or securities. CME Group Inc., which, together with its subsidiaries, operates derivatives exchanges, 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. Dow Jones & Company, Inc. 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.

¹⁹ See NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

²⁰ See NYSE Arca Equities Rule 1.1(u) (defining Market Maker).

- (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.
- (4) 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 (a) 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 (b) 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: (i) the customer’s financial status; (ii) the customer’s tax status; (iii) the customer’s investment objectives; and (iv) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.²¹ Further, the Exchange’s Information Bulletin regarding the Funds will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statements.

²¹ 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”). The Exchange represents that ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

- (5) 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 the Intermarket Surveillance Group or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.
- (6) 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 IFV 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 IFV is disseminated; (e) a static IFV will be disseminated between the close of trading of Natural Gas Futures Contracts on NYMEX and the close of the NYSE Arca Core Trading Session; (f) 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 (g) trading information. In addition, the Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged products.

- (7) A minimum of 100,000 Shares will be outstanding as of the start of trading on the Exchange.
- (8) 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.

This approval order is based on the Exchange's representations.²²

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²³ 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,²⁴ that the proposed rule change (SR-NYSEArca-2011-24) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Elizabeth M. Murphy
Secretary

²² 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 Commodity Futures Trading Commission ("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.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 15 U.S.C. 78s(b)(2).

²⁵ 17 CFR 200.30-3(a)(12).