

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-67100; File No. SR-NYSEArca-2012-49)

June 4, 2012

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow the Use of Swap Agreements Under Limited Circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, Which Are Listed and Traded on the Exchange Under NYSE Arca Equities Rule 8.200, Commentary .02

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that, on May 22, 2012, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (“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 accommodate the use of swap agreements under limited circumstances by the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF, which are listed and traded on the Exchange under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and 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").³ The Commission has approved listing and trading on the Exchange of shares ("Shares") of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") under NYSE Arca Equities Rule 8.200, Commentary .02,⁴ and the Shares have commenced listing and trading on the Exchange.

The Funds seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index, and the benchmark for ProShares VIX Mid-Term Futures

³ 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.

⁴ See Securities Exchange Act Release No. 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR-NYSEArca-2010-101) ("Prior Order"). The notice with respect to the Prior Order was published in Securities Exchange Act Release No. 63317 (November 16, 2010), 75 FR 71158 (November 22, 2010) ("Prior Notice" and, together with the Prior Order, "Prior Release").

ETF is the S&P 500 VIX Mid-Term Futures Index (each, an “Index,” and collectively, “Indexes”).⁵ To pursue their respective investment objectives, the Funds invest in futures contracts that comprise their respective Index and that are based on the Chicago Board Options Exchange (“CBOE”) Volatility Index or “VIX” (“VIX Futures Contracts”). VIX Futures Contracts are traded on the CBOE Futures Exchange (“CFE”). Each Fund also may invest 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) that may serve as collateral for the futures contracts.

ProShare Capital Management LLC (“Sponsor”), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II (“Trust”).⁶ The Sponsor is a commodity pool operator and commodity trading advisor. Brown Brothers Harriman & Co. serves as the administrator (“Administrator”), custodian, and transfer agent of the Funds and their respective Shares. SEI Investments Distribution Co. (“Distributor”) serves as Distributor of the Shares. Wilmington Trust Company, a Delaware banking corporation, is the sole trustee of the Trust.

⁵ Standard & Poor’s Financial Services LLC, the index sponsor with respect to the Indexes, is not a broker-dealer or affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

⁶ The Trust has filed a registration statement on Form S-3 under the Securities Act of 1933 (15 U.S.C. 77a), dated November 5, 2010, relating to the Funds (File No. 333-163511) (“Registration Statement”). The description of the Funds and the Shares contained in the Prior Release were based, in part, on the Registration Statement. The changes described herein will become effective upon filing with the Commission of an amendment to the Trust’s Registration Statement. The Sponsor represents that the Sponsor has managed and will continue to manage the Funds in the manner described in the Prior Release, and will not implement the changes described herein until the instant proposed rule change becomes operative and an amendment to the Registration Statement has become effective.

According to the Registration Statement, if a Fund is successful in meeting its objective, its value (before fees and expenses) should gain approximately as much on a percentage basis as the level of its corresponding Index when it rises. Conversely, its value (before fees and expenses) should lose approximately as much on a percentage basis as the level of its corresponding Index when it declines. Each Fund acquires exposure through VIX Futures Contracts such that each Fund has exposure intended to approximate the benchmark at the time of the net asset value (“NAV”) calculation.⁷

Under the current proposal, the Funds seek to utilize swap agreements and futures contracts other than VIX Futures Contracts (as further described herein) to pursue their respective investment objectives.⁸

Going forward, in the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps referencing the relevant Index or particular VIX Futures Contracts, or invest in other futures contracts or swaps not based on the particular VIX Futures Contracts if such instruments tend to exhibit trading prices or returns that correlate with the

⁷ Terms relating to the Funds, the Shares, and the Indexes referred to, but not defined, herein are defined in the Registration Statement.

⁸ The Commission previously has approved listing and trading on the Exchange of issues of TIRs under NYSE Arca Equities Rule 8.200, Commentary .02 that may hold swaps under limited circumstances. See, e.g., Securities Exchange Act Release Nos. 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR-NYSEArca-2010-44) (order approving Exchange listing and trading of United States Commodity Index Fund); 63869 (February 8, 2011), 76 FR 8799 (February 15, 2011) (SR-NYSEArca-2010-119) (order approving Exchange listing and trading of Teucrium WTI Crude Oil Fund); and 65134 (August 15, 2011), 76 FR 52034 (August 19, 2011) (SR-NYSEArca-2011-23) (order approving Exchange listing and trading of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF).

Indexes or any VIX Futures Contract and will further the investment objective of the Funds.⁹

The Funds 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 the Funds from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contracts directly or other futures contract.¹⁰

The above representations regarding the Funds' prospective use of swaps and other futures contracts are substantially the same as those made with respect to other funds of the Trust that utilize VIX Futures Contracts and that have been approved by the Commission for listing and trading on the Exchange.¹¹ The Sponsor believes it is necessary and appropriate to have additional flexibility to utilize swaps and futures contracts other than VIX Futures Contracts in a manner that will further the investment objective of the Funds, in the event position

⁹ To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. Each Fund also may invest 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) that may serve as collateral for the futures contracts and swap agreements.

¹⁰ 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, which will be described in the Registration Statement. The Funds will enter into swap agreements only with financial institutions that meet certain credit quality standards and monitoring policies. The Funds may use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties, and limiting the net amount due from any individual counterparty. The Funds generally will collateralize swap agreements with cash and/or certain securities. Such collateral will generally be held for the benefit of the counterparty in a segregated tri-party account at the custodian to protect the counterparty against non-payment by the Funds. In the event of a default by the counterparty, and the Funds are owed money in the swap transaction, the Funds will seek withdrawal of this collateral from the segregated account and may incur certain costs exercising its right with respect to the collateral.

¹¹ See note 9, supra, regarding Commission approval of SR-NYSEArca-2011-23.

accountability rules are reached with respect to VIX Futures Contracts. Such procedures would be the same as those applicable to other funds of the Trust based on VIX Futures Contracts that are currently listed on the Exchange. The Sponsor believes application by the Sponsor of consistent investment procedures among funds of the Trust that hold VIX Futures Contracts, including the Funds, with respect to utilization of swaps and futures contracts other than VIX Futures Contracts, will promote efficient operation of the Funds in furtherance of each Fund's investment objective.

In addition, with respect to any Fund's holdings of 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 ("ISG") or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The intra-day futures prices, closing price, and settlement prices of the VIX Futures Contracts or other futures contracts, as applicable, held by the Funds will be available from the CFE, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services. Information relating to cleared swaps will be available from major market data vendors. The value of swaps and futures contracts other than VIX Futures Contracts, as applicable, will be included in: (1) the calculation of the NAV for the Shares, which is disseminated daily; and (2) the Indicative Optimized Portfolio Value ("IOPV") for the Shares, which is widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.¹² The portfolio disclosure for the Funds, which is

¹² Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs taken from the Consolidated Tape Association or other data feeds.

disseminated daily, will include swaps and futures contracts other than VIX Futures Contracts, if any, in addition to VIX Futures Contracts.

All other representations in the Prior Release remain as stated therein and no other changes are being made.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹³ 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, 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 the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Under normal market conditions, the Funds invest in VIX Futures Contracts, which are traded on CFE, an ISG member. Going forward, in the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause the Funds to obtain exposure through swaps or other futures contracts, as described above. To the extent practicable,

¹³ 15 U.S.C. 78f(b)(5).

the Funds will invest in swaps cleared through the facilities of a centralized clearing house. The Sponsor will 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 intra-day futures prices, closing price, and settlement prices of the VIX Futures Contracts or other futures contracts, as applicable, held by the Funds will also be available from the CFE, other futures exchanges, automated quotation systems, published or other public sources, or on-line information services. Information relating to cleared swaps and futures contracts other than VIX Futures Contracts, as applicable, held by the Funds will be available from major market data vendors. The value of swaps and futures contracts other than VIX Futures Contracts, as applicable, will be included in: (1) the calculation of NAV for the Shares, which is disseminated daily, and (2) the IOPV for the Shares. The portfolio disclosure for the Funds, which is disseminated daily, will include swaps and futures contracts other than VIX Futures Contracts, if any, in addition to VIX Futures Contracts. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association. Each Fund's total portfolio composition will be disclosed on the Funds' website or another relevant website. The Exchange represents that the Exchange may halt trading during the day in which the interruption to the dissemination of the IOPV, the value of the Indexes, the VIX, or the value of the underlying VIX Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the value of the Indexes, the VIX, or the value of the underlying VIX 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. With respect to any Fund's holdings of 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 ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

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. One or more major market data vendors will disseminate the level of each Index at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. Eastern time and at the close of trading on each business day. The NAV per Share is 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 recent NAV per Share and Shares outstanding. The IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. 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.

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, IOPV, 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the operative delay would permit the Funds to utilize, under certain limited circumstances, swap agreements and futures contracts other than VIX Futures Contracts to pursue their respective investment objectives.

The Funds may invest in swaps and futures contracts other than VIX Futures Contracts in the event position accountability rules are reached with respect to VIX Futures Contracts, and may also invest in swaps if the market for a specific futures contract experiences certain emergencies or disruptions. NYSE Arca represents that any investments in swaps or futures contracts other than VIX Futures Contracts would be consistent with the Funds' respective investment objectives. To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearinghouse. In addition, the Sponsor will attempt to mitigate swap counterparty credit risk by transacting only with large, well-capitalized institutions. The value of swaps and futures contracts other than VIX Futures Contracts will be included in the calculation of the NAV and IOPV for the Shares. Each Fund's total portfolio composition, including any swaps and futures contracts other than VIX Futures Contracts held by the Funds, will be disclosed on the Funds' website or another relevant website. In addition, not more than 10% of the weight of futures contracts traded on exchanges held by each Fund in the aggregate shall consist of components whose principal trading market is not a member of the ISG or is a market with which NYSE Arca does not have a comprehensive surveillance sharing agreement. Further, NYSE Arca represents that the Funds' respective investment objectives are not changing, all other representations made in the Prior Release remain unchanged, and the Funds

will continue to comply with initial and continued listing requirements under NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. For the foregoing reasons, the Commission believes that the proposed change does not raise novel or unique regulatory issues that should delay the implementation of the Funds' proposed investments in swaps and futures contracts other than VIX Futures Contracts. Accordingly, the Commission waives the 30-day operative delay requirement because the proposed rule change is consistent with the protection of investors and the public interest.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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. Please include File Number SR-NYSEArca-2012-49 on the subject line.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2012-49. 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-NYSEArca-2012-49 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.¹⁸

Kevin M. O'Neill
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).