

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89511; File No. SR-NYSEArca-2020-72)

August 10, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Certain Changes Regarding the Underlying Benchmark for the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 31, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 self-regulatory organization. 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 certain changes regarding the underlying benchmark for the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF, which are currently listed and traded on the Exchange under NYSE Arca Rule 8.200-E (Trust Issued Receipts). 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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

The Exchange currently lists and trades shares of the ProShares Ultra Bloomberg Crude Oil ETF and ProShares UltraShort Bloomberg Crude Oil ETF (each a “Fund” and, together, the “Funds”) under NYSE Arca Rule 8.200-E (Trust Issued Receipts). The Exchange proposes certain changes regarding the benchmark index underlying the Funds. Shares of the Funds initially were approved for listing on the American Stock Exchange LLC (“Amex”) in 2008,⁴ and were subsequently listed on the Exchange in 2008.⁵

⁴ See Securities Exchange Act Release Nos. 57932 (June 5, 2008), 73 FR 33467 (June 12, 2008) (SR-Amex-2008-39) (Notice of Filing of Proposed Rule Change and Amendment No. 1 thereto Relating to the Listing and Trading of Trust Issued Receipts that Directly Hold Investments in Certain Financial Instruments and to Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust) (“Prior Amex Notice”); 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR-Amex-2008-39) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of Trust Issued Receipts that Directly Hold Investments in Certain Financial Instruments and to Permit the Listing and Trading of Shares of Fourteen Funds of the Commodities and Currency Trust) (“Prior Amex Order” and, together with the Prior Amex Notice, the “Prior Amex Releases”).

⁵ See Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR-NYSEArca-2008-91) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Regarding the Listing of Fourteen Funds of the Commodities and Currency Trust).

The Funds are series of the ProShares Trust II (“Trust”).⁶ ProShare Capital Management LLC (“Managing Owner” or “Sponsor”) serves as the commodity pool operator for each Fund. The Managing Owner is registered as a commodity pool operator with the Commodity Futures Trading Commission, and with the National Futures Association. The Funds were identified in the Prior Amex Releases as the Ultra DJ-AIG Crude Oil ProShares and UltraShort DJAIG Crude Oil ProShares, respectively.⁷

The Prior Amex Releases stated that the Ultra DJ-AIG Crude Oil ProShares (now known as the ProShares Ultra Bloomberg Crude Oil ETF) seeks daily investment results, before fees and expenses, that correspond to twice (200%) the daily performance of the Fund’s underlying benchmark (described below); and the UltraShort DJ-AIG Crude Oil ProShares (now known as

⁶ See 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 of Proposed Rule Change Relating to the ProShares Trust II) (“Prior NYSE Arca Notice”).

⁷ The Commission has previously approved listing of Trust Issued Receipts based on oil on the Amex and NYSE Arca. See, e.g., Securities Exchange Act Release Nos. 53582 (March 31, 2006), 71 FR 17510 (April 6, 2006) (SR-Amex-2005-127) (order approving listing and trading of shares of United States Oil Fund, LP); 57188 (January 23, 2008), 73 FR 5607 (January 30, 2008) (SR-Amex-2007-70) (order approving listing and trading of shares of United States Heating Oil Fund, LP and United States Gasoline Fund, LP); 61881 (April 9, 2010), 75 FR 20028 (April 16, 2010) (SR-NYSEArca-2010-14) (order approving listing and trading of shares of United States Brent Oil Fund, LP); 62527 (July 19, 2010), 75 FR 4360 (July 26, 2010) (order approving listing and trading of shares of United States Commodity Index Fund); 81655 (September 19, 2017), 82 FR 44678 (September 25, 2017) (SR-NYSEArca-2016-177) (Notice of Filing of Amendment No. 4, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, Relating to the Listing and Trading of Shares of the USCF Canadian Crude Oil Index Fund Under NYSE Arca Rule 8.200-E); 81686 (September 22, 2017), 82 FR 45643 (September 29, 2017) (SR-NYSEArca-2017-05) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3 Thereto, to List and Trade Shares of Direxion Daily Crude Oil Bull 3x Shares and Direxion Daily Crude Oil Bear 3x Shares under NYSE Arca Equities Rule 8.200); 80427 (April 11, 2017), 82 FR 18058 (April 14, 2017) (SR-NYSEArca-2016-173) (Order Approving a Proposed Rule Change, as Modified by Amendments No. 2 and No. 3 Thereto, To List and Trade Shares of the United States 3x Oil Fund and United States 3x Short Oil Fund Under NYSE Arca Equities Rule 8.200, Commentary .02).

ProShares UltraShort Bloomberg Crude Oil ETF) seeks daily investment results, before fees and expenses, that correspond to twice the inverse (-200%) of the daily performance of the Fund's underlying benchmark. The Prior Amex Releases stated that the Funds may hold any combination of investments, including cash, securities, options on securities and indices, commodities, futures contracts, options on futures contracts, forward contracts, equity caps, collars, and floors, and swap agreements (collectively, "Financial Instruments").

The Funds' Current Benchmark

The Funds' underlying benchmark ("Current Benchmark") was identified in the Prior Amex Releases as the Dow Jones-AIG Crude Oil Sub-Index Excess Return. The Dow Jones-AIG Crude Oil Sub-Index Excess Return was renamed the Bloomberg WTI Crude Oil Subindex as of July 1, 2014, after Bloomberg Finance L.P. replaced Dow Jones as the index administrator. Each Fund changed its name to reflect this change. The Current Benchmark aims to track the price of nearby futures contracts of sweet, light crude oil traded on the New York Mercantile Exchange, Inc. ("NYMEX"). It consists of a single WTI crude oil futures contract selected from the three nearest expiration dates for such contract. The Current Benchmark reflects the cost of rolling the futures contracts included in the Current Benchmark, without regard to income earned on cash positions. The Current Benchmark is a subindex of the Bloomberg Commodity Index and conforms to the representations in the Prior Amex Releases regarding the Dow Jones-AIG Crude Oil Sub-Index Excess Return.

As stated in the Prior Amex Releases, in seeking to achieve each Fund's investment objective, the Managing Owner determines the type, quantity, and mix of investment positions that it believes in combination should produce daily returns consistent with a Fund's investment objective. Each Fund invests principally in any one of, or combinations of, Financial Instruments

with respect to the underlying benchmark to the extent determined appropriate by the Managing Owner. In addition, each Fund may establish long or short positions in Financial Instruments as the Managing Owner believes will further the investment objective of each Fund.

The Funds' New Benchmark

The Trust intends to change the underlying benchmark for the Funds from the Current Benchmark to a new benchmark, the Bloomberg Commodity Balanced WTI Crude Oil Index the ("New Benchmark"). Bloomberg Index Services Limited ("Bloomberg") is the index administrator for the New Benchmark. The Trust intends to amend the current registration statement for the Funds to implement this change.⁸

According to the Registration Statement, the New Benchmark aims to track the performance of three separate contract schedules for West Texas Intermediate ("WTI") Crude Oil futures traded on NYMEX. The contract schedules are equally-weighted in the New Benchmark (1/3 each) at each semi-annual reset in March and September. At each semi-annual reset date, one-third of the New Benchmark is designated to follow a monthly roll schedule. Each month this portion of the New Benchmark rolls from the current futures contract (called "Lead" by Bloomberg, and which expires one month out) into the following month's contract (called "Next" by Bloomberg and which expires two months out).⁹ The second portion of the

⁸ See Pre-Effective Amendment No. 2 to the Trust's registration statement on Form S-3 filed with the Commission on July 15, 2020 (File No. 333-237993) ("Registration Statement"). The representations herein relating to the Funds and the Trust are based, in part, on the Registration Statement. The Trust will not change each Fund's underlying benchmark until this proposed rule change is effective and operative.

⁹ For example, at the beginning of January each year, one third of the New Benchmark will be rolled from the March futures contract (which expires in February) to the April futures contract (which expires in March). As a result of this roll, this portion of the New Benchmark will be exposed to the futures contract that is third closest to expiration (i.e., the April contract—as each of the February, March and April contracts trade at the beginning of January).

New Benchmark is always designated to be in a June contract, and follows an annual roll schedule in March of each year in which the June contract expiring in the current year is rolled into the June contract expiring the following year.¹⁰ The remaining portion is always designated to be in a December contract, and follows an annual roll schedule in September of each year in which the December contract expiring in the current year is rolled into the December contract expiring the following year.¹¹ The weighting (i.e., percentage) of each of the three contract schedules included in the New Benchmark fluctuate above or below one-third between the semi-annual reset dates due to changing futures prices and the impact of rolling the futures positions.¹² As a result, the weighting of each contract in the New Benchmark will “drift” away from equal weighting. The New Benchmark reflects the cost of rolling the futures contracts included in the New Benchmark, without regard to income earned on cash positions.

Values for the New Benchmark are determined on each day on which NYMEX is open for trading. The New Benchmark’s methodology and values are publicly available on Bloomberg’s website.¹³

¹⁰ For example, at the beginning of March 2021, the second portion of the New Benchmark will be rolled from the June 2021 futures contract to the June 2022 futures contract.

¹¹ For example, at the beginning of September 2020, the third portion of the New Benchmark will be rolled from the December 2020 futures contract to the December 2021 futures contract.

¹² For example, at the close of the first business day of March each year, the target weights for each contract in the New Benchmark will be reset to 33.33%, 33.33% and 33.33%. Each subsequent business day up to the September semi-annual reset date, the contract weights will fluctuate away from 33.33%, 33.33%, 33.33% depending on futures prices and the impact from rolling the futures. At the close of the first business day of September of that same year, the target weights will once again be reset to 33.33%, 33.33%, 33.33% and will fluctuate thereafter until the next semi-annual reset date.

¹³ See: <https://data.bloomberglp.com/professional/sites/10/Bloomberg-Commodity-Balanced-WTI-Crude-Oil-Index-Methodology.pdf>

Differences between the Current Benchmark and the New Benchmark

The Funds' Current Benchmark includes only a single WTI crude oil futures contract selected from the three nearest expiration dates. As noted herein, the New Benchmark is equally weighted (at each semi-annual reset date) across three different WTI futures contract schedules and includes longer-dated contracts than those included in the Current Benchmark.

Other than the change to the Funds' underlying benchmark, as described above, each of the Funds will continue to comply with all other listing requirements set forth in the Prior Amex Releases, the Prior NYSE Arca Notice and NYSE Arca Rule 8.200-E, as applicable.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹⁴ 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 Sponsor has represented to the Exchange that it believes that the proposed change to the New Benchmark should benefit Fund investors by diversifying the Funds' exposure across futures contracts with three different expiration dates, including longer-dated contracts than those included in the Current Benchmark, thereby potentially reducing the volatility of each Fund. The Sponsor has further represented to the Exchange that it believes the potential for lower volatility is especially important to Fund investors in light of global events during the first half of 2020, which could continue for the foreseeable future, including the COVID-19 pandemic, a significant

¹⁴ 15 U.S.C. 78f(b)(5).

oversupply in the crude oil market, a significant increase in volatility, and contango that resulted in a negative price in the May 2020 WTI crude oil futures contract.

The Funds' benchmark will continue to be based on pricing of WTI crude oil futures, and the types of Financial Instruments in which the Funds may invest are consistent with those described in the Prior Amex Releases. The Exchange notes that the Commission has previously approved listing of Trust Issued Receipts based on oil on the Amex and NYSE Arca.¹⁵

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 purpose of the Act. The Exchange believes that the proposed rule change will facilitate fair and orderly trading of Shares of the Funds utilizing the New Benchmark that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

¹⁵ See note 7, supra.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁸ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange states that waiver of the 30-day operative delay would permit the Funds to more quickly change their underlying benchmark. According to the Exchange, other than the change to the Funds' underlying benchmark, as described above, each of the Funds will continue to comply with all other listing requirements set forth in the Prior Amex Releases, the Prior NYSE Arca Notice and NYSE Arca Rule 8.200-E, as applicable. The proposed rule change does not raise any novel regulatory issues, and the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal as operative upon filing.²⁰

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

change, along with a brief description and text of 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule change 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-2020-72 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.

All submissions should refer to File Number SR-NYSEArca-2020-72. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2020-72, 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).