

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85860; File No. SR-NYSEArca-2019-02)

May 15, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of the Shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF under NYSE Arca Rule 8.200-E

On January 28, 2019, 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 UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF under NYSE Arca Rule 8.200-E. The proposed rule change was published for comment in the Federal Register on February 15, 2019.³

On March 26, 2019, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ The Commission has received no comment letters on the proposal.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85088 (Feb. 11, 2019), 84 FR 4573 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 85417 (Mar. 26, 2019), 84 FR 12304 (Apr. 1, 2019). The Commission designated May 16, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Exchange's Description of the Proposal⁷

The Exchange proposes to list and trade shares (“Shares”) of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF (individually “Fund” and, collectively, “Funds”) under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.⁸ Each Fund is a series of the ProShares Trust II (“Trust”), a Delaware statutory trust.⁹ The Trust and the Funds are managed and controlled by ProShare Capital Management LLC (“ProShare Capital” or “Sponsor”). ProShare Capital is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association.

ProShares UltraPro 3x Natural Gas ETF

The investment objective of this Fund is to seek daily investment results, before fees and expenses, that correspond to three times (3x) the performance of the Bloomberg Natural Gas

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding, among other things, the Shares, Funds, investment objective, permitted investments, investment strategies and methodology, investment restrictions, creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures, can be found in the Notice (see supra note 3) and the Registration Statement (see infra note 9), as applicable.

⁸ Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in “Financial Instruments.” The term “Financial Instruments,” as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, 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.

⁹ The Trust is registered under the Securities Act of 1933. On May 19, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 relating to the Funds (File No. 333-218136) (“Registration Statement”).

SubindexSM (“Benchmark”).¹⁰ This Fund seeks to achieve its investment objective for a single day, not for any other period.¹¹

ProShares UltraPro 3x Short Natural Gas ETF

The investment objective of this Fund is to seek daily investment results, before fees and expenses, that correspond to three times the inverse (-3x) of the performance of the Benchmark. This Fund seeks to achieve its investment objective for a single day, not for any other period.

Investment Strategies of the Funds

In seeking to achieve the Funds’ investment objectives, the Sponsor will utilize a mathematical approach to determine the type, quantity, and mix of investment positions that ProShare Capital believes, in combination, should produce daily returns consistent with the Funds’ respective objectives.

Each Fund will seek to meet its respective investment objective by investing, under normal market conditions,¹² in futures contracts traded in the United States and listed options on

¹⁰ The Benchmark is intended to reflect the performance of a rolling position in natural gas futures contracts listed on the New York Mercantile Exchange (“NYMEX”), including the impact of rolling, without regard to income earned on cash positions. The Benchmark is a “rolling index,” which means that the Index performance includes the impact of closing out futures contracts that are nearing expiration and replacing them with futures contracts with later expirations. This process is commonly referred to as “rolling.”

¹¹ The return of a Fund for a period longer than a single trading day is the result of its return for each day compounded over the period and thus will usually differ from a Fund’s multiple times the return of the Benchmark for the same period.

¹² The term “normal market conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance. See NYSE Arca Rule 8.600-E(c)(5).

such contracts (collectively, “Futures Contracts”).¹³ The Funds will not invest directly in natural gas. The Funds’ investments in Futures Contracts will be used to produce economically “leveraged” or “inverse leveraged” investment results for the Funds.

Each Fund also may obtain exposure to the Benchmark through investment in over-the-counter (“OTC”) swap transactions and forward contracts referencing such Benchmark (“Financial Instruments”). For example, a Fund may invest in Financial Instruments in the event position, price or accountability limits are reached with respect to Futures Contracts¹⁴ or exposure limits are reached with a particular futures commission merchant or 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 in situations where the Sponsor deems it impractical or inadvisable to buy or sell Futures Contracts (such as during periods of market volatility or illiquidity).

Each Fund will also hold cash or cash equivalents, such as U.S. Treasury securities or other high credit quality, short-term fixed-income or similar securities (such as shares of money market funds and collateralized repurchase agreements), pending investment in Futures Contracts or Financial Instruments or as collateral for the Funds’ investments.

¹³ A Futures Contract is a standardized contract traded on, or subject to the rules of, an exchange that calls for the future delivery of a specified quantity and type of a particular underlying asset at a specified time and place or alternatively may call for cash settlement. The notional size and calendar term Futures Contracts on a particular underlying asset are identical and are not subject to any negotiation, other than with respect to price and the number of contracts traded between the buyer and seller.

¹⁴ Many designated contract markets, such as the NYMEX, have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control may hold, own or control. In addition, NYMEX also sets price fluctuation limits on futures contracts. Options do not have individual price limits but rather are linked to the price limit of Futures Contracts.

In addition, to the extent a Fund enters into swap agreements and other over-the-counter transactions, it will do so only with large, established and well capitalized financial institutions that meet the Sponsor's credit quality standards and monitoring policies. Each Fund will 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 do not intend to hold Futures Contracts through expiration, but instead intend to "roll" or close their respective positions before expiration. When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the "rolling process" of the more nearby contract would take place at a price that is lower than the price of the more distant contract. This pattern of higher futures prices for longer expiration Futures Contracts is referred to as "contango." Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the "rolling process" of the more nearby contract would take place at a price that is higher than the price of the more distant contract. This pattern of higher futures prices for shorter expiration Futures Contracts is referred to as "backwardation." The presence of contango in certain Futures Contracts at the time of rolling could adversely affect a Fund with long positions, and positively affect a Fund with short positions. Similarly, the presence of backwardation in certain Futures Contracts¹¹ at the time of

¹¹ The Funds may invest in options on Futures Contracts. Unlike Futures Contracts, which the Funds intend to roll before expiration, the Funds intend to hold "in-the-money" options on Futures Contracts to expiration. The Funds would exercise in-the-money options on Futures Contracts at expiration of the options contract and they would settle through receipt or delivery of the underlying Futures Contracts. Out-of-the money options will be held to expiration and will be expired worthless. Options on Futures Contracts are subject to the effects of contango and backwardation to the same general extent as their underlying Futures Contracts.

rolling such contracts could adversely affect a Fund with short positions and positively affect a Fund with long positions.

II. Proceedings to Determine Whether to Approve or Disapprove SR-NYSEArca-2019-02 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁵ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."¹⁷

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written

¹⁵ 15 U.S.C. 78s(b)(2)(B).

¹⁶ Id.

¹⁷ 15 U.S.C. 78f(b)(5).

views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.¹⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

In particular, the Exchange states that each Fund may obtain exposure to the Benchmark through investment in OTC Financial Instruments under certain conditions, including situations where the Sponsor deems it impractical or inadvisable to buy or sell Futures Contracts (such as during periods of market volatility or illiquidity). The Commission seeks commenters' views on whether the Exchange has described in sufficient detail the conditions where the Sponsor deems it impractical or inadvisable to buy or sell Futures Contracts to enable the Funds to obtain exposure to the Benchmark through investment in OTC Financial Instruments.

¹⁸ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2019-02 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-2019-02. 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-2019-02 and should be submitted by [insert date 21 days from date of publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Eduardo A. Aleman
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12) & 17 CFR 200.30-3(a)(57).