For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–11972 Filed 5–16–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64470; File No. SR–NYSEArca–2011–23]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares 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 Under NYSE Arca Equities Rule 8.200, Commentary .02

May 11, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 28, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") 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 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 list and trade shares 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 under NYSE Arca Equities Rule 8.200, Commentary .02. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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

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 Exchange proposes to list and trade shares ("Shares") of ProShares Short VIX Short-Term Futures ETF, ProShares Short VIX Mid-Term Futures ETF (the "Short Funds"), ProShares Ultra VIX Short-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF (the "Ultra Funds"), ProShares UltraShort VIX Short-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF (the "UltraShort Funds" and, together with the Short and Ultra Funds, the "Funds") under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds seek, on a daily basis, to provide investment results (before fees and expenses) that correspond to the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares Short VIX Short-Term Futures ETF, ProShares Ultra VIX Short-Term Futures ETF, and ProShares UltraShort VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index, and the benchmark for ProShares Short VIX Mid-Term Futures ETF, ProShares Ultra VIX Mid-Term Futures ETF, and ProShares UltraShort VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, the "Indexes").[5] The Funds will take long (in the case of the Ultra Funds) and short (in the case of the Short and UltraShort Funds) positions in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") and, under limited circumstances, swap agreements (as further described herein), to pursue their respective investment objectives. 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.

Each Fund acquires exposure through VIX futures contracts traded on the CBOE Futures Exchange ("CFE") ("VIX Futures Contracts") such that each Fund has exposure intended to approximate the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of its respective Index at the time of the net asset value ("NAV") calculation.[6]

ProShare Capital Management LLC ("Sponsor"), a Maryland limited liability company, serves as the Sponsor of ProShares Trust II (the "Trust"). The Sponsor is a commodity pool operator and commodity trading advisor.[7] Brown

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[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] The Commission previously has approved listing on the Exchange under Commentary .02 to NYSE Arca Equities Rule 8.200 of certain securities issuers. *See, e.g.,* Securities Exchange Act Release Nos. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91) (order granting accelerated approval to list on NYSE Arca of 14 ProShares funds); 63610 (December 27, 2010), 76 FR 199 (January 3, 2011) (SR–NYSEArca–2010–101) (order approving listing and trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF). *See also* Securities Exchange Act Release No. 58968 (November 17, 2008), 73 FR 71082 (November 24, 2008) (SR–NYSEArca–2008–111) (order granting accelerated approval of proposed rule change to amend NYSE Arca Equities Rule 5.2(j)(6)(v) to add CBOE Volatility Index (VIX) Futures to the definition of Futures Reference Asset).

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

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

[7] The Funds have filed a registration statement on Form S–3 under the Securities Act of 1933. *See* Post-Effective Amendment No. 4 dated April 13,

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Brothers Harriman & Co. serves as the administrator (the "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.

According to the Registration Statement, each Fund seeks to achieve its investment objective by investing under normal market conditions in VIX Futures Contracts.[8] In the event position accountability rules are reached with respect to VIX Futures Contracts, the Sponsor, may, in its commercially reasonable judgment, cause such Fund 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 Indexes or any VIX Futures Contract and will further the investment objective of such Fund.[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 a Fund from obtaining the appropriate amount of investment exposure to the affected VIX Futures Contracts directly or to other futures contracts.[10]

According to the Registration Statement, if the Short Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately as much on a percentage basis as their respective Index when it rises on a given day.

If the Ultra Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it rises on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it declines on a given day.

If the UltraShort Funds are successful in meeting their objectives, their values (before fees and expenses) should gain approximately twice as much on a percentage basis as their respective Index when it declines on a given day. Conversely, their values (before fees and expenses) should lose approximately twice as much on a percentage basis as their respective Index when it rises on a given day.

Each of the Funds uses investment techniques that include the use of any one or a combination of VIX Futures Contracts and may, if applicable, include swap agreements. 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 Funds do not seek to achieve their stated investment objective over a period of time greater than one day because mathematical compounding prevents the Funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a simple inverse correlation (−100%), multiple correlation (+200%) or multiple inverse correlation (−200%) of the period return of the corresponding Index and may differ significantly.

According to the Registration Statement, each Fund is not actively managed by traditional methods, which typically involve effecting changes in the composition of a portfolio on the basis of judgments relating to economic, financial and market considerations with a view toward obtaining positive results under all market conditions. Rather, the Sponsor seeks to cause the NAV to track the inverse of the daily performance, a multiple of the daily performance or an inverse multiple of the daily performance of an Index even during periods in which that benchmark is flat or moving in a manner which causes the NAV of a Fund to decline.

In seeking to achieve each Fund's investment objective, the Sponsor uses a mathematical approach to investing. Using this approach, the Sponsor determines the type, quantity and mix of investment positions that the Sponsor believes in combination should produce returns consistent with such Fund's objective. The Sponsor relies upon a pre-determined model to generate orders that result in repositioning the Funds' investments in accordance with their respective investment objectives.

VIX Futures Contracts

The Indexes are comprised of, and the value of the Funds will be based on, VIX Futures Contracts. VIX Futures Contracts are measures of the market's expectation of the level of VIX at certain points in the future, and as such will behave differently than current or spot VIX values.[11] The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, could significantly underperform or outperform the VIX.

While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date). To illustrate, on January 31, 2011, the VIX was 19.53 and the price of the February 2011 VIX Futures Contracts expiring on February 16, 2011 was 19.10. In this example, the price of the VIX represented the 30-day implied, or "spot," volatility (the volatility expected for the period from January 31 to March 2, 2011) of the S&P 500, and the February VIX futures represented forward implied volatility (the volatility expected for the period from February 16, 2011 to March 16, 2011) of the S&P 500.[12] The VIX Futures

2011 (File No. 333–163511) to the Trust's Registration Statement on Form S–3 ("Registration Statement"). The description of the Funds and the Shares contained herein are based on the Registration Statement.

[8] The term "under normal conditions" includes, but is not limited to, the absence of extreme volatility or trading halts in the 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 man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

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

[10] According to the Registration Statement, 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, as described in the Registration Statement.

[11] VIX is the ticker symbol for the CBOE Volatility Index, a popular measure of implied volatility. According to the Registration Statement, the goal of the VIX is to estimate the implied volatility of the S&P 500 over the next 30 days. A relatively high level of the VIX corresponds to a more volatile U.S. equity market as expressed by more costly options on the S&P 500 Index. The VIX represents one measure of the market's expectation of the volatility over the next 30 day period. It is a composite value of options on the S&P 500 Index. The formula used to calculate the composite value utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

[12] As of January 31, 2011, there was VIX Futures Contracts open interest on CFE of 163,396 contracts with a value of open interest of $3,461,984,900. Total CFE trading volume in 2010 in VIX Futures Contracts was 4,402,616 contracts, with average daily volume of 17,741 contracts. Total volume

Contracts trade from 8:20 a.m. Eastern Time ("E.T.") to 4:15 p.m. E.T.

The S&P 500 VIX Short-Term Futures Index and S&P 500 VIX Mid-Term Futures Index

According to the Registration Statement, the Indexes act as a measure of volatility as reflected by the price of certain VIX Futures Contracts (the "Index Components"), with the price of each VIX Futures Contract reflecting the market's expectation of future volatility. Each Index seeks to reflect the returns that are potentially available from holding an unleveraged long position in certain VIX Futures Contracts.

Unlike the Indexes, the VIX, which is not a benchmark for any Fund, is calculated based on the prices of put and call options on the S&P 500, which are traded on the CBOE.

The S&P 500 VIX Short-Term Futures Index employs rules for selecting the Index Components and a formula to calculate a level for the Index from the prices of these components. Specifically, the Index Components represent the prices of the two near-term VIX futures months, replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts. This results in a constant weighted average maturity of one month. The roll period begins on the Tuesday prior to the monthly CFE VIX Futures Contracts settlement date and runs through the Tuesday prior to the subsequent month's CFE VIX Futures Contract settlement date.

The S&P 500 VIX Mid-Term Futures Index also employs rules for selecting the Index Components and a formula to calculate the level of the Index from the prices of these components. Specifically, the Index Components represent the prices for four contract months of VIX Futures Contracts, representing a market-based estimation of constant maturity, five month forward implied VIX values. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts, and rolls continuously throughout each month while maintaining positions in the fifth and sixth month contracts. This results in a constant weighted average maturity of five months.

Calculation of the Indexes

The level of each Index is calculated in accordance with the method described in the Registration Statement. The level of each Index will be published at least every 15 seconds both in real time from 9:30 a.m. to 4:15 p.m. E.T. and at the close of trading on each Business Day by Bloomberg L.P. and Reuters.[13]

The Index Components comprising each Index represent the prices of certain futures contracts on the VIX. Each Index takes a daily rolling long position in contracts of specified maturities and is intended to reflect the returns that are potentially available through an unleveraged investment in those contracts. The S&P 500 VIX Short-Term Futures Index measures the return from a rolling long position in the first and second month VIX Futures Contracts. The Index rolls continuously throughout each month from the first month VIX Futures Contract into the second month VIX Futures Contract. The S&P 500 VIX Mid-Term Futures Index measures the return from a rolling long position in the fourth, fifth, sixth and seventh month VIX Futures Contracts. The Index rolls continuously throughout each month from the fourth month contract into the seventh month contract while maintaining positions in the fifth month and sixth month contracts.

The Indexes roll on a daily basis. According to the Registration Statement, one of the effects of daily rolling is to maintain a constant weighted average maturity for the underlying futures contracts. Unlike equities, which typically entitle the holder to a continuing stake in a corporation, futures contracts normally specify a certain date for the delivery of the underlying asset or financial instrument or, in the case of futures contracts relating to indices such as the VIX, a certain date for payment in cash of an amount determined by the level of the underlying index. The Indexes operate by selling, on a daily basis, Index Components with a nearby settlement date and purchasing Index Components with a longer-dated settlement date. The roll for each contract occurs on each Business Day according to a pre-determined schedule that has the effect of keeping constant the weighted average maturity of the relevant Index Components. This process is known as "rolling" a futures position, and each Index is a "rolling index." The constant weighted average maturity for the futures underlying the S&P 500 VIX Short-Term Futures Index is one month and for the futures underlying the S&P 500 VIX Mid-Term Futures Index, five months.

Because the Indexes incorporate this process of rolling futures positions on a daily basis, and the Funds, in general, also roll their positions on a daily basis, the daily roll is not anticipated to be a significant source of tracking error between a Fund and its respective Index. The Indexes are based on VIX Futures Contracts and not the VIX, and as such neither the Funds nor the Indexes are expected to track the VIX.

Purchases and Redemptions of Creation Units

The Funds will create and redeem Shares from time to time in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Except when aggregated in Creation Units, the Shares are not redeemable securities.

On any Business Day, an Authorized Participant may place an order with the Distributor to create one or more Creation Units.[14] The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of each Fund on the purchase order date plus the applicable transaction fee.

The procedures by which an Authorized Participant can redeem one or more Creation Units mirror the procedures for the purchase of Creation Units. On any Business Day, an Authorized Participant may place an order with the Distributor to redeem one or more Creation Units. The redemption proceeds from a Fund consist of the cash redemption amount. The cash redemption amount is equal to the NAV of the number of Creation Unit(s) of a Fund requested in the Authorized Participant's redemption order as of the time of the calculation of a Fund's NAV on the redemption order date, less transaction fees.

Availability of Information Regarding the Shares

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 the same time.[15] The Exchange will make

year-to-date (through January 31, 2011) is 779,493 contracts, with average daily volume of 38,975 contracts. (Source: Bloomberg and CBOE).

[13] A "Business Day" means any day other than a day when any of the NYSE, the NYSE Arca, the CBOE, or the CFE or other exchange material to the valuation or operation of the Funds, or the calculation of the VIX, options contracts underlying the VIX, VIX Futures Contracts or the Indexes is closed for trading.

[14] Authorized Participants have a cut-off time of 12 p.m. E.T. to place creation and redemption orders.

[15] According to the Registration Statement, NAV means the total assets of the Funds including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of the Funds, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of

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available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding.

The intra-day, closing and settlement prices of the Index Components are also readily available from the Web sites of the CFE (*http://www.cfe.cboe.com*), automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. Complete real-time data for component futures underlying the Indexes is available by subscription from Reuters and Bloomberg. The CFE also provides delayed futures information on current and past trading sessions and market news free of charge on its Web site. The specific contract specifications for component futures underlying the Indexes are also available on such Web sites, as well as other financial informational sources. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Funds' Web site at *http://www.proshares.com* will display the end of day closing Index levels and NAV.

The Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the notional value (in U.S. dollars) of VIX Futures Contracts, other financial instruments, if any, cash equivalents, and amount of cash held in the portfolio of the Funds. This Web site disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Funds 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 Web site as well as in electronic files provided to Authorized Participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' Web site.

In addition, in order to provide updated information relating to the Funds for use by investors and market professionals, an updated Indicative Optimized Portfolio Value ("IOPV") will be calculated. The IOPV is an indicator of the value of the VIX Futures Contracts and cash and/or cash equivalents less liabilities of a Fund at the time the IOPV is disseminated. NYSE Arca will calculate and disseminate every 15 seconds throughout the NYSE Arca Core Trading Session (9:30 a.m. to 4 p.m. E.T.) an updated IOPV. The IOPV will be calculated by the NYSE Arca using the prior day's closing net assets of a Fund as a base and updating throughout the trading day changes in the value of such Fund's holdings.

The IOPV is published on the NYSE Arca's Web site and is available through on-line information services such as Bloomberg and Reuters.

The IOPV disseminated during the Core Trading Session should not be viewed as an actual real time update of the NAV, which is calculated only once a day. The IOPV also should not be viewed as a precise value of the Shares.

The Exchange believes that dissemination of the IOPV provides additional information regarding the Funds that is not otherwise available to the public and is useful to professionals and investors in connection with the related Shares trading on the Exchange or the creation or redemption of such Shares.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement.

Trading Rules

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. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

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 Holders acting as registered Market Makers in TIRs to facilitate surveillance. See "Surveillance" below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. 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 underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's "circuit breaker" rule [16] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange represents that the Exchange may halt trading during the day in which an interruption to the dissemination of the IOPV, the value of an Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If an interruption to the dissemination of the IOPV, the value of an Index, 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.

The Funds will meet the initial and continued listing requirements applicable to TIRs in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[17] the Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Act. A minimum of 100,000 Shares of each of the Funds will be outstanding as of the start of trading on the Exchange.

Suitability

Currently, NYSE Arca Equities Rule 9.2(a) (Diligence as to Accounts) provides that an ETP Holder, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer as to its other security holdings and as to its financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder must make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information

accounting. Each Fund's NAV is calculated at 4:15 p.m. E.T.

[16] *See* NYSE Arca Equities Rule 7.12.

[17] 17 CFR 240.10A–3.

that such ETP Holder believes would be useful to make a recommendation.

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 (1) 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 (2) 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: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such member or registered representative in making recommendations to the customer.

In addition, 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) (the "FINRA Regulatory Notices"). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices.

As disclosed in the Registration Statement, the Funds seek leveraged, inverse, or leveraged inverse returns on a daily basis. Unlike conventional stock-based indexes and funds, it is not expected that the VIX Futures Indexes or the Funds will generally rise over time. In addition, the Exchange's Information Bulletin regarding the Funds, described below, will provide information regarding the suitability of an investment in the Shares, as stated in the Registration Statement.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including TIRs, to monitor trading in the Shares. The Exchange represents that these 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.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, options, futures or options on futures on Shares through ETP Holders, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the Intermarket Surveillance Group ("ISG"), including the CBOE and CFE, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[18] A list of ISG members is available at *http://www.isgportal.org.*[19]

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 ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

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: (1) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Shares in Creation Baskets and Redemption Baskets (and that Shares are not individually redeemable); (3) 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; (4) 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 (5) trading information.

The Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Funds. The Exchange notes that investors purchasing Shares directly from the Funds will receive a prospectus. ETP Holders purchasing Shares from the Funds for resale to investors will deliver a prospectus to such investors. The Information Bulletin will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs. The Information Bulletin will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the Commodity Futures Trading Commission has regulatory jurisdiction over futures contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Shares of the Funds and that the NAV for the Shares is calculated after 4:15 p.m. E.T. each trading day. The Bulletin will disclose that information about the Shares of the Funds is publicly available on the Funds' Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[20] 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

[18] Telephone call among Michael Cavalier, Chief Counsel, Exchange, and Tim Malinowski, Senior Director, Global Index and Exchange Traded Funds, Exchange, and Ed Cho and Kristie Diemer, Special Counsels, Division, Commission, on May 11, 2011, clarifying the Exchange's ability to obtain surveillance information.

[19] The Exchange notes that not all components of the Funds' holdings may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[20] 15 U.S.C. 78f(b)(5).

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 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 will invest in VIX Futures Contracts, which are traded on CFE, an ISG member. The intra-day futures prices, closing price and settlement prices of the futures contracts held by the Funds are also available from the CFE, automated quotation systems, published or other public sources, or on-line information services. Quotation and last-sale information for the Shares will be available via CTA. Each Fund's total portfolio composition will be disclosed on the Funds' Web site or another relevant Web site.

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. E.T. and at the close of trading on each Business Day. The NAV per Share will be 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. NYSE Arca will calculate and disseminate every 15 seconds throughout the NYSE Arca Core Trading Session an updated IOPV. 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. Moreover, 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. The Information Bulletin will also reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to leveraged ETFs and options on leveraged ETFs.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be 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–2011–23 on the subject line.

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–2011–23. 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 Web site (*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 Web site 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 a.m. and 3 p.m. Copies of the filing will also 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 No. SR–NYSEArca–2011–23 and should be submitted on or before June 7, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–12017 Filed 5–16–11; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).