

99 or fewer contracts are generally entered by small retail customers, whereas customer orders of 100 or greater contracts are generally entered by larger, more active customers. Such customers are largely more sophisticated than smaller retail customers and have the capability to “link” orders themselves (send orders to the exchange displaying the NBBO), while smaller retail customers often do not have such capabilities. As such, CBOE does not want to unduly subsidize Linkage orders for parties that are capable of handling that function themselves. Moreover, different fee structures are appropriate for these different groups due to their different demographics and trading characteristics, and the Exchange currently has set this 100-contract threshold in multiple places in its Fees Schedule.<sup>10</sup>

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

CBOE 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*

The Exchange neither solicited nor received comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>11</sup> of the Act and paragraph (f) of Rule 19b-4<sup>12</sup> thereunder. 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.

### **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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2012-022 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-CBOE-2012-022. This file number should be included on the subject line if email 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 such 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-CBOE-2012-022 and should be submitted on or before April 5, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Kevin M. O’Neill,**

*Deputy Secretary.*

[FR Doc. 2012-6234 Filed 3-14-12; 8:45 am]

**BILLING CODE 8011-01-P**

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-66552; File No. SR-C2-2011-043]

#### **Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to Changes to the Automated Improvement Mechanism**

March 9, 2012.

#### **I. Introduction**

On December 30, 2011, C2 Options Exchange, Incorporated (“Exchange” or “C2”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change relating to its Automated Improvement Mechanism (“AIM”). The proposed rule change was published for comment in the **Federal Register** on January 18, 2012.<sup>3</sup> On March 2, 2012, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1 thereto.

#### **II. Description of the Proposal**

C2’s AIM allows a Participant<sup>5</sup> to cross an agency order it presents as agent (“Agency Order”) against principal interest or a solicited order, provided that it first exposes the Agency Order to a one-second auction. If the Agency Order is 50 contracts or greater, the Participant (“Initiating Participant”) must stop the Agency Order at the national best bid or offer (“NBBO”) (or the order’s limit price if better), and if it is less than 50 contracts, the Participant must stop the Agency Order at the NBBO improved by one minimum increment (or the order’s limit price if better).<sup>6</sup> When initiating an auction, an

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 66131 (January 11, 2012), 77 FR 2595 (January 18, 2012) (“Notice”).

<sup>4</sup> In Amendment No. 1, the Exchange represented that it will provide to the Commission the same data that the Chicago Board of Options Exchange, Incorporated provides to the Commission in connection with that exchange’s AIM. See Securities Exchange Act Release No. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006). Amendment No. 1 is technical in nature, and therefore the Commission is not publishing Amendment No. 1 for public comment.

<sup>5</sup> The term “Participant” is defined in C2 Rule 1.1.

<sup>6</sup> See Rule 6.51(a)(2)–(3). See also Rule 6.51, Interpretations and Policies .03, noting that for at

<sup>10</sup> See Note 9 and also Exchange Fees Schedule, footnote (9), in which the Exchange waives transaction fees for customer orders of 99 contracts or less in ETF, ETN and HOLDRs options.

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

Initiating Participant submitting an Agency Order to the AIM either must indicate a single price at which it seeks to cross the Agency Order ("single-price submission") or must indicate that it will match as principal the price and size of all AIM responses ("auto-match").<sup>7</sup> Once the Initiating Participant has submitted an Agency Order for processing, such submission may not be modified or cancelled.<sup>8</sup> A Request for Responses ("RFR") will then be sent to any Participant that has elected to receive such requests, and the exposure period will last for one second.<sup>9</sup> If the auction attracts responses (which may be submitted by Participants), the Agency Order will be allocated at the best price(s), subject to the allocation algorithm in effect for the option class, and public customer orders in the book will have priority.<sup>10</sup> If the best price equals the initiating Participant's single-price submission, then the Initiating Participant will be allocated the greater of one contract or a specified percentage of the order, which percentage will be determined by the Exchange and may not be greater than 40% (or 50% in the case of a single-price submission where only one other market maker matches the price).<sup>11</sup>

The Exchange proposes to amend Rule 6.51 to allow an Initiating Participant to enter an Agency Order for fewer than 50 contracts into the AIM at the NBBO. The proposal eliminates the distinction between orders for fewer than 50 contracts and orders for 50 contracts or greater and thereby will allow an Initiating Participant to submit to AIM an Agency Order of any size at the NBBO.

The Exchange also proposes to allow an Initiating Participant to elect to auto-match competing prices from other market participants up to a designated limit price. The Initiating Participant will not be able to cancel the auto-match instruction after an AIM Auction commences and will have no control over the prices at which it receives an allocation in the auction other than the outside boundary established by the designated limit price.

The Exchange notes that, during the existing pilot for certain components of AIM, there is no minimum size requirement for orders that are eligible for AIM. In connection with the pilot program, the Exchange represents that it

will continue to submit to the Commission reports providing AIM Auction and order execution data, including monthly data regarding executions through AIM of agency orders for 50 contracts or greater or for fewer than 50 contracts, as supporting evidence that, among other things, there is meaningful competition for all size orders.<sup>12</sup>

The Exchange represents that, in connection with the proposed auto-match feature, it will provide the Commission with the following additional data: (1) The percentage of trades effected through AIM in which the Initiating Participant submitted an Agency Order with an auto-match instruction that included a designated limit price and the percentage that did not include a designated limit price; and (2) the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted an auto-match instruction that included a designated limit price and the average amount that did not include a designated limit price, versus the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted a single price (no auto-match instruction).

At least one week prior to implementation of the proposed rule change, the Exchange will issue a notice to Participants informing them of the implementation of the additional auto-match feature. Participants will have an opportunity to make any necessary modifications to coincide with the implementation date.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>13</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and Section 6(b)(5) of the Act,<sup>15</sup> in particular, which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect

the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to permit Initiating Participants to stop an Agency Order for fewer than 50 contracts at the better of the NBBO or the order's limit price will continue to provide customers with an opportunity for price improvement over the NBBO. The Commission also believes that the proposal will continue to provide Participants with incentives to compete in AIM Auctions. The Commission notes that once an Agency Order is submitted into the AIM Auction, the submission may not be modified or cancelled. Therefore, the Agency Order submitted to the AIM Auction will be guaranteed an execution price of at least the NBBO and, moreover, will be given an opportunity for execution at a price better than the NBBO.

The Commission notes that the Initiating Participant's maximum allocation in the auction will be only 40% (or 50% in the case of a single price submission where only one other market maker matches the price). Further, C2's current rules provide for broad participation in the AIM Auction,<sup>16</sup> which should allow for a meaningful, competitive auction. Moreover, the Commission believes that the proposal may encourage increased participation in the AIM by Participants willing to trade with an Agency Order of less than 50 contracts at the NBBO but not better than the NBBO. The Commission also notes that the proposal makes the handling of AIM Agency Orders of under 50 contracts consistent with larger AIM Agency Orders. Finally, the Commission notes that it will continue to receive data from the Exchange pursuant to the AIM pilot program, and that it will have the opportunity to evaluate the data to assess the impact of the proposal.<sup>17</sup>

The Commission believes that the proposal to add an option for Initiating Participants to auto-match competing prices from other market participants up to a designated limit price is also consistent with the Act. The Commission believes that the change may encourage increased participation in AIM because it will allow Initiating Participants to trade with an Agency Order at a price better than the NBBO, but only up to a certain price.<sup>18</sup> In

least a Pilot Period expiring on July 18, 2012, there will be no minimum size requirement for orders to be eligible for the auction.

<sup>7</sup> See Rule 6.51(b)(1)(A).

<sup>8</sup> See *id.*

<sup>9</sup> See Rule 6.51(b)(1)(B)–(C).

<sup>10</sup> See Rule 6.51(b)(3)(A).

<sup>11</sup> See Rule 6.51(b)(3)(F).

<sup>12</sup> See Rule 6.51, Interpretation and Policies .03. See also Amendment No. 1, *supra* note 4.

<sup>13</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> See Rule 6.51(b)(1)(D).

<sup>17</sup> See Amendment No. 1, *supra* note 4.

<sup>18</sup> The Commission also notes that the Exchange's auto-match proposal is similar to the current rules

addition, the Exchange will provide the Commission with data showing the average amount of price improvement provided to AIM Agency Orders when the Initiating Participant submitted an auto-match instruction versus the average amount of price improvement provided when there is no auto-match instruction. This additional data will allow the Commission to evaluate this change.

Thus, for the reasons set forth above, the Commission believes that the proposal is consistent with the requirements of the Act.

#### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (SR-C2-2011-043), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Kevin M. O'Neill,**  
Deputy Secretary.

[FR Doc. 2012-6230 Filed 3-14-12; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-66553; File No. SR-NYSEArca-2012-04]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to Listing and Trading of Shares of Twenty-Six Series of ProShares Trust II under NYSE Arca Equities Rule 8.200

March 9, 2012.

#### I. Introduction

On January 6, 2012, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of

twenty-six series of the ProShares Trust II under Commentary .02 to NYSE Arca Equities Rule 8.200. The proposed rule change was published for comment in the **Federal Register** on January 24, 2012.<sup>3</sup> The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

#### II. Description of the Proposed Rule Change

The Exchange proposes to list and trade shares ("Shares") of the following funds (each a "Fund" and, collectively, "Funds") pursuant to NYSE Arca Equities Rule 8.200, Commentary .02: ProShares UltraPro Australian Dollar, ProShares UltraPro Canadian Dollar, ProShares UltraPro Swiss Franc, ProShares UltraPro Euro, ProShares UltraPro U.S. Dollar, and ProShares UltraPro Yen (collectively, "UltraPro Funds"); ProShares UltraPro Short Australian Dollar, ProShares UltraPro Short Canadian Dollar, ProShares UltraPro Short Swiss Franc, ProShares UltraPro Short Euro, ProShares UltraPro Short U.S. Dollar, and ProShares UltraPro Short Yen (collectively, "UltraPro Short Funds"); ProShares Ultra Australian Dollar, ProShares Ultra Canadian Dollar, ProShares Ultra Swiss Franc and ProShares Ultra U.S. Dollar (collectively, "Ultra Funds"); ProShares UltraShort Australian Dollar, ProShares UltraShort Canadian Dollar, ProShares UltraShort Swiss Franc and ProShares UltraShort U.S. Dollar (collectively, "UltraShort Funds"); and ProShares Short Australian Dollar, ProShares Short Canadian Dollar, ProShares Short Swiss Franc, ProShares Short Euro, ProShares Short U.S. Dollar, and ProShares Short Yen (collectively, "Short Funds"). NYSE Arca Equities Rule 8.200, Commentary .02 permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges.<sup>4</sup> Each Fund is a series of the ProShares Trust II ("Trust"), a Delaware statutory trust.<sup>5</sup> ProShare Capital Management LLC ("Sponsor") is the Trust's sponsor, and Wilmington Trust Company is the Trust's trustee. Brown Brothers

Harriman & Co. ("Administrator") serves as the administrator, custodian, and transfer agent of the Funds. SEI Investments Distribution Co. ("Distributor") serves as distributor of the Shares.

The UltraPro Funds seek daily investment results (before fees and expenses) that correspond to three times (+300%) the daily performance, whether positive or negative, of their corresponding benchmark, and the UltraPro Short Funds seek daily investment results (before fees and expenses) that correspond to three times the inverse (−300%) of the daily performance, whether positive or negative, of their corresponding benchmark. The Ultra Funds seek daily investment results (before fees and expenses) that correspond to twice (+200%) the daily performance, whether positive or negative, of their corresponding benchmarks, and the UltraShort Funds seek daily investment results (before fees and expenses) that correspond to twice the inverse (−200%) of the daily performance, whether positive or negative, of their corresponding benchmarks. The Short Funds seek daily investment results (before fees and expenses) that correspond to the inverse (−100%) of the daily performance, whether positive or negative, of their corresponding benchmarks (each corresponding benchmark is referred to as a "Benchmark" and, collectively, "Benchmarks").

Each of the Funds will hold futures contracts on the applicable Benchmark or, in the case of a Benchmark index, futures contracts on such Benchmark index or the Benchmark index components, that are traded on a United States exchange ("Benchmark Futures Contracts") and, to a limited extent, forward contracts, as described below, to produce the economically "inverse," "leveraged," or "inverse leveraged" investment results, as set forth by each Fund's investment objective.

Each Fund seeks to achieve its investment objective by investing, under normal market conditions,<sup>6</sup> in Benchmark Futures Contracts. In the event position accountability rules or position limits are reached with respect to a particular Benchmark Futures Contract, the Sponsor may, in its

of the Boston Options Exchange Group, LLC ("BOX") and the International Securities Exchange, LLC ("ISE") relating to the Price Improvement Period ("PIP") and Price Improvement Mechanism ("PIM"), respectively. See Securities Exchange Act Release Nos. 62644 (August 4, 2010), 75 FR 48395 (August 10, 2010) (SR-ISE-2010-61) (notice of filing and immediate effectiveness of rule change to add auto-match functionality in the PIM) and 61805 (March 31, 2010), 75 FR 17454 (April 6, 2010) (SR-BX-2010-022) (notice of filing and immediate effectiveness of rule change to add auto-match functionality in the PIP).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 66180 (January 18, 2012), 77 FR 3532 ("Notice").

<sup>4</sup> Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>5</sup> See registration statement on Form S-1, dated December 22, 2011 (File No. 333-178707) ("Registration Statement").

<sup>6</sup> The term "under normal market 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.