Exchange.[19] Since demutualization, a Series A–1 permit has expanded a member's ability to gain access to the Exchange at a significantly lower cost.[20] Today, there are no restrictions on the number of permits the Exchange may issue and, assuming the qualifications are met, a member organization may hold any number of permits, which does not prevent access to the Exchange.

The Exchange believes that this proposal simplifies the affiliation process and applies it equally to all members. The Exchange believes that allowing for affiliation where there is a common ownership and up to two affiliations is a simple, straightforward process for allowing access to the Exchange for the purpose of allowing floor traders to meet Exchange rules and for assistance with staffing issues.

The Exchange believes that amending the language in Rule 908(h) will provide members with clarity as to permit transfers. Finally, requiring applicants to submit their information within a 90 calendar day period, absent a showing of good cause, provides the Membership Department with information that can be utilized to make reasonable decisions concerning membership at the Exchange.

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 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 either solicited or received.

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 No. SR–Phlx–2010–148 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 No. *SR–Phlx–2010–148.* 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. *SR–Phlx–2010–148* and should be submitted on or before December 13, 2010.

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

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29343 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63317; File No. SR–NYSEArca–2010–101]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to the Listing and Trading of the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 5, 2010, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the ProShares VIX Short-Term Futures ETF and the ProShares 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,

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[19] Prior to demutualization, the Exchange had a limited number of seats and the dual affiliation allowed for additional access. There is no fixed number of Series A–1 permits today.

[20] The Exchange also allows members on the Exchange's trading floor to appoint inactive nominees pursuant to By-Law Article XII, Section 12–10. The inactive nominee allows a Member to have additional flexibility in obtaining coverage on the trading floor.

[21] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

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 the ProShares VIX Short-Term Futures ETF and the ProShares VIX Mid-Term Futures ETF ("Funds") under NYSE Arca Equities Rule 8.200, Commentary .02.[4] The Funds seek to provide investment results (before fees and expenses) that match the performance of a benchmark that seeks to offer exposure to market volatility through publicly traded futures markets. The benchmark for ProShares VIX Short-Term Futures ETF is the S&P 500 VIX Short-Term Futures Index and the benchmark for ProShares VIX Mid-Term Futures ETF is the S&P 500 VIX Mid-Term Futures Index (each, an "Index," and, collectively, "Indexes").[5] The Funds will invest in futures contracts based on the Chicago Board Options Exchange ("CBOE") Volatility Index ("VIX") 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.

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

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

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 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.[8] The Funds are not linked to the VIX, and in many cases the Indexes, and by extension the Funds, will significantly underperform 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 July 30, 2010, the VIX was 23.5 and the price of the October 2010 VIX Futures Contracts expiring on October 20, 2010 was 29.7. In this example, the price of the VIX represented the 30-day implied, or "spot," volatility (the volatility expected for the period from July 30 to August 30, 2010) of the S&P 500, and the October VIX Futures Contracts represented forward implied volatility (the volatility expected for the period from October 20 to November 20, 2010) of the S&P 500.[9] The VIX Futures Contracts trade from 9:30 a.m. to 4:15 p.m. Eastern Time ("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

[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); and 58983 (November 20, 2008), 73 FR 73368 (December 2, 2008) (SR–NYSEArca–2008–126) (order granting accelerated approval to list on NYSE Arca the GreenHaven Continuous Commodity Index Fund). *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 is the index sponsor with respect to the Indexes and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Indexes.

[6] The Funds have filed a registration statement on Form S–3 under the Securities Act of 1933, dated November 5, 2010 (File No. 333–163511) ("Registration Statement"). The description of the Funds and the Shares contained herein are based on the Registration Statement.

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

[8] VIX is the ticker symbol for the CBOE Volatility Index, a popular measure of implied volatility. 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 [sic] over the next 30 day period. It is a blend of prices for a range of options on the S&P 500 Index. The formula utilizes current market prices for a series of out-of-the-money calls and puts for the front month and second month expirations.

[9] As of June 14, 2010, there was VIX Futures Contracts open interest on CFE of 88,366 contracts with a contract price of $25.55 and value of open interest of $2,257,751,300. Total CFE trading volume in 2009 in VIX Futures Contracts was 1,143,612 contracts, with average daily volume of 4,538 contracts. Total volume year-to-date (through May 31, 2010) is 1,399,709 contracts, with average daily volume of 13,458 contracts. (Source: Bloomberg and CBOE).

of volatility as reflected by the price of certain VIX Futures Contracts ("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 either 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.[10]

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 Contracts into the second month VIX Futures Contracts. 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. 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 futures contracts. 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 is 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 either 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.[11] The total cash payment required to create each Creation Unit is the NAV of 50,000 Shares of the Funds 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.[12] The Exchange will make available on its Web site daily trading volume of each of the Shares, closing prices of such Shares, and number of Shares outstanding.

The closing prices 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

[10] 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 regular trading.

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

[12] According to the Registration Statement, net asset value 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 accounting. Each Fund's NAV is calculated at 4:15 p.m. (E.T.).

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 (*http://www.cfe.cboe.com*). 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 and characteristics of such instruments and 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 calculates and disseminates every 15 seconds throughout the trading day an updated IOPV. The IOPV is 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 the Funds' holdings.

The NYSE Arca disseminates the IOPV. In addition, 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 Trust Issued Receipts 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 [13] 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 the interruption to the dissemination of the IOPV, the value of the Index, the VIX or the value of the underlying VIX Futures Contracts occurs. If the interruption to the dissemination of the IOPV, the value of the 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 Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[14] the Shares 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.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, 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

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

[14] 17 CFR 240.10A–3.

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. A list of ISG members is available at *http://www.isgportal.org.*

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 (6) trading information.

In addition, 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 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 proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5),[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the proposed rule change will permit the listing of an additional issuance of Trust Issued Receipts on the Exchange that will enhance competition, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in Rule 8.200 are intended to protect investors and the public interest.

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–2010–101 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–2010–101. 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 20549–1090 on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchange's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–101 and should be submitted on or before December 13, 2010.

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

[16] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–29351 Filed 11–19–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63321; File No. SR–BX–2010–077]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish a Pilot Program to List Series With Additional Expiration Months for Each Class of Options Opened for Trading on BOX

November 16, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 10, 2010, NASDAQ OMX BX, Inc. (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 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 amend Chapter IV, Section 6 (Series of Options Contracts Open for Trading) of the Rules of the Boston Options Exchange Group, LLC ("BOX") to adopt a Pilot Program to list additional expiration months for each class of options opened for trading on BOX. The text of the proposed rule change is available from the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* at the Commission's Public Reference Room and also on the Exchange's Internet web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/.*

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to adopt a Pilot Program to list additional expiration months for each class of options opened for trading on BOX, by adding proposed Supplementary Material .08 in Chapter IV, Section 6 of the BOX Rules.

Pursuant to Chapter IV, Section 6(e) of the BOX Rules, BOX currently opens four expiration months for each class of options open for trading on BOX, the first two being the two nearest months, regardless of the quarterly cycle on which that class trades; the third and fourth being the next two months of the quarterly cycle previously designated for that specific class. For example, if BOX listed in late May a new equity option on a January-April-July-October quarterly cycle, BOX would list the two nearest term months (June and July) and the next two months of the cycle (October and January). When the June series expires, BOX would add the August series as the next nearest month. And when the July series expires, BOX would add the September series.

BOX believes that there is market demand for a greater number of expiration months. The Exchange therefore proposes to adopt a Pilot Program pursuant to which it will list up to an additional two expiration months, for a total of six expiration months for each class of options open for trading on BOX. The program will be effective on a pilot basis immediately after approval is received to establish the pilot program, and expiring on October 31, 2011. Under the proposal, the additional months listed pursuant to the pilot program will result in four consecutive expiration months plus two months from the quarterly cycle. For example, for option classes in the January cycle that have expiration months of June, July, October, and January, BOX would additionally list the August and September series. For options classes in the February quarterly cycle that have expiration months of October, November, February, and May, BOX would additionally list the December and January series. Under the proposal, no additional LEAP Series will be created.

BOX seeks to limit the proposed rule change to 20 actively traded options classes. By limiting the pilot to a small number of classes, BOX will be able to gauge interest in the pilot while limiting any additional demands on system resources. It has been estimated that this pilot could add up to six or seven percent to current quote traffic, although changes in market maker quoting behavior may reduce that increase by up to half. BOX believes that a limited pilot is a prudent step to determine actual market demand for additional expiration months.

If the Exchange were to propose an extension or an expansion of the pilot program, or should the Exchange propose to make the pilot program permanent, BOX will submit, along with any filing proposing such amendments to the pilot program, a pilot program report ("Report") that will provide an analysis of the Pilot Program covering the first nine months of the pilot program and shall submit the Report to the Commission at least sixty (60) days prior to the expiration date of the pilot program. The Report will include, at a minimum: (1) Data and written analysis on the open interest and trading volume in the classes for which additional expiration months were opened; (2) an assessment of the appropriateness of the options classes selected for the pilot program; (3) an assessment of the impact of the pilot program on the capacity on BOX, OPRA, and on market data vendors (to the extent data from market data vendors is available); (4) any capacity problems or other problems that arose during the operation of the pilot program and how BOX addressed such problems; (5) any complaints that BOX or the Exchange received during the operation of the pilot program and how BOX and the Exchange addressed them; and (6) any additional information that would assist the Commission in assessing the operation of the Pilot Program.

Finally, BOX represents that it has the necessary systems capacity to support new options series that will result from the introduction of additional expiration months listed pursuant to this proposed rule change.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[3]

[17] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).