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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78847; File No. SR-BatsBZX-2016-34)

September 15, 2016

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, to BZX Rule 14.1 (i), Managed Fund Shares, to List and Trade Shares of the ProShares Crude Oil Strategy ETF

I. Introduction

On July 1, 2016, Bats BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the ProShares K-1 Free Crude Oil Strategy ETF (“Fund”), a series of ProShares Trust (“Trust”), under Rule 14.11(i) (“Managed Fund Shares”). The proposed rule change was published for comment in the Federal Register on July 21, 2016.³ The Commission received no comments on the proposed rule change. On August 19, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal in its entirety.⁴ On August 23, 2016, pursuant to Section 19(b)(2) of the Exchange Act,⁵ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78346 (July 15, 2016), 81 FR 47475.

⁴ In Amendment No. 1, the Exchange clarified certain details regarding the holdings of the Fund, clarified a point regarding surveillance over futures contracts held by the Fund, and added details about the Fund.

⁵ 15 U.S.C. 78s(b)(2).

whether to disapprove the proposed rule change.⁶ On September 15, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.⁷ No comments have been received regarding the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change⁸

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.⁹ The Fund will be an actively managed fund that seeks to provide exposure to the West Texas Intermediate ("WTI")

⁶ See Securities Exchange Act Release No. 78643, 81 FR 59253 (August 29, 2016). The Commission designated October 19, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ In Amendment No. 2, the Exchange represented that: (1) all statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (2) the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (3) pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements; and (4) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12. Amendments No. 1 and No. 2 are available at: <https://www.sec.gov/comments/sr-batsbzx-2016-34/batsbzx201634.shtml>. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, it is not subject to notice and comment.

⁸ The Commission notes that additional information regarding the Trust, the Fund, its investments, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Amendment No. 1 and the Registration Statement, as applicable. See Amendment No. 1, *supra* note 4, and Registration Statement, *infra* note 10.

⁹ The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

crude oil futures markets. The Fund's strategy seeks to improve performance over index based strategies by actively managing the rolling of WTI crude oil futures contracts.

The Shares will be offered by the Trust. According to the Exchange, the Trust is registered with the Commission as an open-end investment company.¹⁰ ProShare Advisors LLC is the investment adviser ("Adviser")¹¹ to the Fund and to the Subsidiary.¹² JPMorgan Chase Bank, National Association is the administrator, custodian, fund account agent, index receipt agent, and transfer agent for the Trust. SEI Investments Distribution Co. serves as the distributor for the Trust.

¹⁰ The Exchange states that the Trust has filed a registration statement on behalf of the Fund with the Commission. See Registration Statement on Form N-1A for the Trust, dated May 3, 2016 (File Nos. 333-89822 and 811-21114) ("Registration Statement"). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812-14041).

¹¹ The Exchange states that the Adviser has registered as a Commodity Pool Operator and will become a member of the National Futures Association ("NFA"). The Exchange also states that the Fund and its wholly-owned subsidiary ("Subsidiary") will be subject to regulation by the Commodity Futures Trading Commission and NFA, as well as to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pool operators.

¹² The Exchange states that the Adviser is not a registered broker-dealer, but is currently affiliated with a broker-dealer, and, in the future may be affiliated with other broker-dealers. The Adviser has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. The Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Exchange, the Fund includes only those WTI crude oil contracts traded on the New York Mercantile Exchange and ICE Futures Europe (“WTI Crude Oil Futures”). The Fund’s strategy seeks to improve performance over index based strategies by actively managing the rolling of WTI Crude Oil Futures (e.g., selling a futures contract as it nears its expiration date and replacing it with a new futures contract that has a later expiration date). The Fund generally selects between front, second, and third month WTI Crude Oil Futures, based on an analysis of the liquidity and cost surrounding such positions.

The Fund generally will not invest directly in WTI Crude Oil Futures. The Fund expects to gain exposure to these investments by investing a portion of its assets in the Subsidiary.¹³ The Fund will generally invest up to 25% of its total assets in the Subsidiary and, through such investment, generally remain fully exposed to WTI Crude Oil Futures, even during times of adverse market conditions. To achieve its investment objective, the Fund will, under Normal Market Conditions,¹⁴ invest in: (i) WTI Crude Oil Futures; and (ii) Cash Assets (which are used to collateralize the WTI Crude Oil Futures), which will be held in cash or cash equivalents such

¹³ The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund’s ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund’s Board of Trustees has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund’s role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

¹⁴ As defined in Rule 14.11(i)(3)(E), the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including US agency securities, shares of money market funds, certain variable rate-demand notes, and repurchase agreements collateralized by government securities).

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.¹⁵

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁶ In particular, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act,¹⁷ which requires, among other things, that the Exchange's rules be 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 a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹⁸ which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

¹⁵ 26 U.S.C. 851.

¹⁶ 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).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

According to the Exchange, quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association (“CTA”), and the previous day’s closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Also, daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services.

In addition, the Intraday Indicative Value¹⁹ (as defined in BZX Rule 14.11(i)(3)(C)) will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange’s Regular Trading Hours.²⁰ On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio WTI Crude Oil Futures and other assets (“Disclosed Portfolio”)²¹ that will form the basis for the Fund’s

¹⁹ According to the Exchange, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The Exchange states that quotations of certain of the Fund’s holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange’s Regular Trading Hours. The Exchange’s Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

²⁰ The Exchange notes that several major market data vendors display or make widely available Intraday Indicative Values published via the CTA or other data feeds.

²¹ As defined in BZX Rule 14.11(i)(3)(B), the Disclosed Portfolio will include for each portfolio holding of the Fund and the Subsidiary, as applicable: ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics,

calculation of NAV at the end of the business day. The website for the Fund will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

Intraday price quotations on cash equivalents of the type held by the Fund, with the exception of money market mutual funds, are available from major broker-dealer firms and from third parties, which may provide prices free with a time delay or “live” with a paid fee. For WTI Crude Oil Futures, such intraday information is available directly from the applicable listing exchange. Price information for money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit, and Thomson Reuters.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to BZX Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of the Fund may be halted. 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 WTI Crude Oil Futures and other assets

maturity date, coupon rate, effective date, market value, and percentage weight of the holding in the portfolio. The website and information will be publicly available at no charge.

composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.²² The Exchange represents that it prohibits the distribution of material, non-public information by its employees. The Exchange also states that the Adviser is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio.²³

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange represents that trading of the Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Managed Fund Shares, and that these surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange.²⁴ In addition, the issuer has

²² See BZX Rule 14.11(i)(4)(B)(ii)(b).

²³ The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

²⁴ See Amendment No. 2, supra note 7.

represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and that, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.²⁵

The Commission notes that the Fund and the Shares must comply with the requirements of BZX Rule 14.11(i) to be initially and continuously listed and traded on the Exchange. The Exchange represents that it 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. In support of this proposal, the Exchange has made the following representations:

- (1) The Shares will be subject to BZX Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.
- (2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.²⁶
- (3) The Exchange may obtain information regarding trading in the Shares and the underlying futures via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliate members of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.²⁷

²⁵ See id.

²⁶ See Amendment No. 1, supra note 4, at 19.

²⁷ See id. at 20.

- (4) All of the futures contracts in the Disclosed Portfolio for the Fund will trade on markets that are a member or affiliate member of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁸
- (5) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Exchange Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (6) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.²⁹
- (7) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of

²⁸ See id. at 20, n.17.

²⁹ See 17 CFR 240.10A-3.

liquidity is being maintained, and will consider taking appropriate steps to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

- (8) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the proposed rule change, as modified by Amendments No. 1 and No. 2. For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendments No. 1 and No. 2, is consistent with Section 6(b)(5) of the Exchange Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Exchange 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-BatsBZX-2016-34 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

³⁰ 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-BatsBZX-2016-34. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; 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-BatsBZX-2016-34 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change as Modified by Amendments No. 1 and No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. Amendment No. 1 supplements the proposed rule change by clarifying the Fund's holdings, surveillance, and general Fund details. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange

Act,³¹ to approve the proposed rule change, as modified by Amendments No. 1 and No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR-BatsBZX-2016-34), as modified by Amendments No. 1 and No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Robert W. Errett
Deputy Secretary

³¹ 15 U.S.C. 78s(b)(2).

³² 15 U.S.C. 78s(b)(2).

³³ 17 CFR 200.30-3(a)(12).

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