



**Product Notice 2020-0995**

Date: September 18, 2020

**Re: ProShares Biotechnology Funds**

MEMX LLC (“MEMX or the “Exchange”) was approved by the Securities and Exchange Commission as a registered national securities exchange on May 4, 2020. MEMX intends to commence trading and other operations in September of 2020. This Product Notice is being issued to advise you that the following securities have been approved for trading pursuant to unlisted trading privileges (“UTP”) on MEMX as UTP Derivative Securities pursuant to MEMX Rule 14.1.

<b><u>Securities (the “Fund” or the “ETF”)</u></b>	<b><u>Symbol</u></b>	<b><u>CUSIP</u></b>
ProShares Ultra Nasdaq Biotechnology	BIB	74347R214
ProShares UltraShort Nasdaq Biotechnology	BIS	74347R198

Compliance and supervisory personnel should note that, among other things, this Product Notice discusses the need to deliver a prospectus to customers purchasing shares of the exchange-traded fund. Please forward this Product Notice to interested persons within your organization.

The purpose of this Product Notice is to outline various rules and policies that will be applicable to trading in these new products pursuant to the Exchange’s unlisted trading privileges, as well as to provide certain characteristics and features of the securities. For a more complete description of the Issuer, the securities, and the underlying market instruments or indexes, visit the Issuer Website, consult the Prospectus available on the Issuer Website or examine the Issuer Registration Statement, or review the most current information bulletin issued by the Primary Listing Exchange. The Issuer Website, the Prospectus and the Issuer Registration Statement are hereafter collectively referred to as the “Issuer Disclosure Materials.”

**Background Information**

The ProShares Trust (the “Trust”) is a management investment company registered under the Investment Company Act of 1940, as amended (the “1940 Act”). The Trust consists of multiple Funds (each, a “Fund” and collectively, the “Funds”). This circular refers only to the Funds listed above. The shares of the each Fund are referred to herein as “Shares.” ProShare Advisors LLC (the “Adviser”) serves as the investment adviser for the Funds.

BIB seeks investment results, before fees and expenses, which correspond to twice (200%) the daily performance of the Nasdaq Biotechnology Index (the “Index”). BIB’s investment objective and the Index may be changed without shareholder approval. The Index is a modified capitalization-weighted index designed to measure the performance of Nasdaq-listed companies classified according to the Industry Classification Benchmark as either Biotechnology or Pharmaceuticals which also meet other eligibility criteria.

BIS seeks investment results, before fees and expenses, which correspond to twice (200%) the inverse (opposite) of the daily performance of the Nasdaq Biotechnology Index (the "Index"). BIS's investment objective and the Index may be changed without shareholder approval. The Index is a modified capitalization-weighted index designed to measure the performance of Nasdaq-listed companies classified according to the Industry Classification Benchmark as either Biotechnology or Pharmaceuticals which also meet other eligibility criteria.

For more information regarding each Fund's investment strategy, please read the prospectus for the Funds.

As described more fully in the Trust's prospectus and Statement of Additional Information ("SAI"), each Fund issues and redeems Shares at net asset value ("NAV") only in large blocks of shares, respectively, (each block of Shares called a "Creation Unit") or multiples thereof. Each Creation Unit consists of 50,000 shares. As a practical matter, only broker-dealers or large institutional investors with creation and redemption agreements (called Authorized Participants) can purchase or redeem these Creation Units. Except when aggregated in Creation Units, the Shares may not be redeemed with each Fund.

Dividends from net investment income, if any, are declared and paid at least annually by each Fund. Distributions of net realized securities gains, if any, generally are declared and paid once a year, but the Trust may make distributions on a more frequent basis for each Fund.

Shares are held in book-entry form, which means that no Share certificates are issued. The Depository Trust Company or its nominee is the record owner of all outstanding Shares of each Fund and is recognized as the owner of all Shares for all purposes.

The NAV of each Fund is generally determined each business day at the close of regular trading of the NYSE (ordinarily 4:00 p.m. New York time). The NAV of each Fund is calculated by dividing the value of the net assets of each Fund (I.E., the value of its total assets less total liabilities) by the total number of outstanding shares of each Fund, generally rounded to the nearest cent.

The registration statement for the Funds describes the various fees and expenses for each Fund's Shares. For a more complete description of each Fund and the underlying indexes, visit the Funds' website at [www.ProShares.com](http://www.ProShares.com).

### **Purchases and Redemptions in Creation Unit Size**

NASDAQ members are hereby informed that procedures for purchases and redemptions of Shares in Creation Unit Size are described in the Trust's prospectus and SAI, and that Shares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

### **Continuous Offering**

The method by which Creation Unit Aggregations of shares are created and traded may raise certain issues under applicable securities laws. Because new Creation Unit Aggregations of shares are issued and sold by the each Fund on an ongoing basis, at any point a "distribution," as such term is used in the Securities Act, may occur. Broker-dealers and other persons are cautioned that some activities on their part may,

depending on the circumstances, result in their being deemed participants in a distribution in a manner which could render them statutory underwriters and subject them to the prospectus delivery requirement and liability provisions of the Securities Act.

For example, a broker-dealer firm or its client may be deemed a statutory underwriter if it takes Creation Unit Aggregations after placing an order with the Distributor, breaks them down into constituent shares, and sells such shares directly to customers, or if it chooses to couple the creation of a supply of new shares with an active selling effort involving solicitation of secondary market demand for shares. A determination of whether one is an underwriter for purposes of the Securities Act must take into account all the facts and circumstances pertaining to the activities of the broker-dealer or its client in the particular case, and the examples mentioned above should not be considered a complete description of all the activities that could lead to a categorization as an underwriter.

Broker-dealer firms should also note that dealers who are not “underwriters” but are effecting transactions in shares, whether or not participating in the distribution of shares, generally are required to deliver a prospectus. This is because the prospectus delivery exemption in Section 4(3) of the Securities Act is not available in respect of such transactions as a result of Section 24(d) of the 1940 Act. Firms that incur a prospectus delivery obligation with respect to shares of each Fund are reminded that, pursuant to Rule 153 under the Securities Act, a prospectus delivery obligation under Section 5(b)(2) of the Securities Act owed to an exchange member in connection with a sale on the Listing Exchange is satisfied by the fact that the prospectus is available at the Listing Exchange upon request. The prospectus delivery mechanism provided in Rule 153 is only available with respect to transactions on an exchange.

### **Principal Risks**

Interested persons are referred to the discussion in the prospectus for each Fund of the principal risks of an investment in each Fund. These include: biotechnology risk, leverage risk, concentration risk, correlation and compounding risk, counterparty risk, early close/late close/trading halt risk, equity and market risk, inverse correlation risk, liquidity risk, market price variance risk, non-diversification risk and portfolio turnover risk.

### **Trading Halts**

The Exchange will halt trading in the Shares of a security in accordance with the Exchange’s Rules. The grounds for a halt include a halt because the intraday indicative value of the security and/or the value of its underlying index are not being disseminated as required, a halt for other regulatory reasons or due to other conditions or circumstances deemed to be detrimental to the maintenance of a free and orderly market. In addition, MEMX will stop trading the Shares of a security if the primary market de-lists the security.

### **Trading Hours**

The value of the Index underlying the Shares will be disseminated to the data vendors every 15 seconds during the Regular Trading Session.

The Shares will trade on MEMX between 7:00 am and 8:00 pm (EST). Please note that trading in the Shares during the Exchange’s Pre-Market and Post-Market Sessions (“Extended Market Sessions”) may result in additional trading risks which include: (1) that the current underlying indicative value may not be updated during the Extended Market Sessions, (2) lower liquidity in the Extended Market Sessions may impact pricing, (3) higher volatility in the Extended Market Sessions may impact pricing, (4) wider spreads may occur in the Extended Markets Sessions, and (5) because the indicative value is not calculated or widely disseminated during the Extended Market Sessions, an investor who is unable to calculate an implied value for the Shares in those sessions may be at a disadvantage to market professionals.

### **Dissemination of Fund Data**

The Consolidated Tape Association will disseminate real time trade and quote information for the Shares to Tape B.

<b>Fund Name</b>	<b>Symbol</b>
ProShares Ultra Nasdaq Biotechnology	<b>BIB</b>
ProShares UltraShort Nasdaq Biotechnology	<b>BIS</b>

### **Suitability**

Trading in the securities on the Exchange will be subject to MEMX Rule 3.7 and other applicable suitability rules. Members recommending transactions in the securities to customers should make a determination that the recommendation is suitable for the customer.

### **Delivery of a Prospectus**

Exchange Members should be mindful of applicable prospectus delivery requirements under the federal securities laws with respect to transactions in the Fund. Prospectuses may be obtained through the Fund’s website. The Prospectus for the Fund does not contain all of the information set forth in the Fund’s Registration Statement (including the exhibits to the Registration Statement), parts of which have been omitted in accordance with the rules and regulations of the SEC. For further information about the Fund, please refer to its Registration Statement.

In the event that the Fund relies upon an order by the SEC exempting the Shares from certain prospectus delivery requirements under Section 24(d) of the 1940 Act and in the future make available a written product description, Exchange Rules require that Exchange Members provide to all purchasers of Shares a written description of the terms and characteristics of such securities, in a form prepared by the Issuer of the Fund, no later than the time a confirmation of the first transaction in the Shares is delivered to such purchaser. In addition, Exchange Members shall include such a written description with any sales material relating to the Shares that is provided to customers or the public. Any other written materials provided by a MEMX member to customers or the public making specific reference to the Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of [the UTP Derivative Securities] has been prepared by the [open-ended management

investment company name] and is available from your broker. It is recommended that you obtain and review such circular before purchasing [the UTP Derivative Securities].”

An Exchange member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to such Exchange member under this rule.

Upon request of a customer, Exchange Members also shall provide a copy of the Prospectus.

### **Exemptive, Interpretive and No-Action Relief Under Federal Securities Regulations**

The SEC has issued exemptive, interpretive or no-action relief from certain provisions of rules under the Securities Exchange Act of 1934 (the “Act”) regarding trading in the above mentioned exchange-traded funds.

#### **Regulation M Exemptions**

Generally, Rules 101 and 102 of Regulation M prohibit any “distribution participant” and its “affiliated purchasers” from bidding for, purchasing, or attempting to induce any person to bid for or purchase any security which is the subject of a distribution until after the applicable restricted period, except as specifically permitted in Regulation M. The provisions of the Rules apply to underwriters, prospective underwriters, brokers, dealers, and other persons who have agreed to participate or are participating in a distribution of securities.

The SEC has granted an exemption from Rule 101 under Regulation M to permit persons participating in a distribution of shares of the above-mentioned Funds to engage in secondary market transactions in such shares during their participation in such a distribution. In addition, the SEC has granted relief under Regulation M to permit persons who may be deemed to be participating in the distribution of Shares of the above-mentioned Funds (i) to purchase securities for the purpose of purchasing Creation Unit Aggregations of Funds’ Shares and (ii) to tender securities for redemption in Creation Unit Aggregations. Further, the SEC has clarified that the tender of the Funds’ Shares to the Funds for redemption does not constitute a bid for or purchase of any of the Funds’ securities during the restricted period of Rule 101. The SEC has also granted an exemption pursuant to paragraph (e) of Rule 102 under Regulation M to allow the redemption of Funds’ Shares in Creation Unit Aggregations during the continuous offering of Shares.

#### **Customer Confirmations for Creation or Redemption of Fund Shares (SEC Rule 10b-10)**

Broker-dealers who handle purchases or redemptions of Fund Shares in Creation Unit size for customers will be permitted to provide such customers with a statement of the number of Creation Unit Aggregations created or redeemed without providing a statement of the identity, number and price of shares of the individual securities tendered to a Fund for purposes of purchasing Creation Unit Aggregations (“Deposit Securities”) or the identity, number and price of shares to be delivered by the Trust for the Fund to the redeeming holder (“Redemption Securities”). The composition of the securities required to be tendered to the Fund for creation purposes and of the securities to be delivered on

redemption will be disseminated each business day and will be applicable to requests for creations or redemption, as the case may be, on that day. This exemptive relief under Rule 10b-10 with respect to creations and redemptions is subject to the following conditions:

- 1) Confirmations to customers engaging in creations or redemptions must state that all information required by Rule 10b-10 will be provided upon request;
- 2) Any such request by a customer for information required by Rule 10b-10 will be filed in a timely manner, in accordance with Rule 10b-10(c);
- 3) Except for the identity, number and price of shares of the component securities of the Deposit Securities and Redemption Securities, as described above, confirmations to customers must disclose all other information required by Rule 10b-10(a).

#### **SEC Rule 14e-5**

An exemption from Rule 14e-5 has been granted to permit any person acting as a dealer-manager of a tender offer for a component security of a Fund (1) to redeem Fund Shares in Creation Unit Aggregations from the issuer that may include a security subject to such tender offer and (2) to purchase Fund Shares during such tender offer. In addition, a no-action position has been taken under Rule 14e-5 if a broker-dealer acting as a dealer-manager of a tender offer for a security of a Fund's purchases or arranges to purchase such securities in the secondary market for the purpose of tendering such securities to purchase one or more Creation Unit Aggregations of Shares, if made in conformance with the following:

- 1) such bids or purchases are effected in the ordinary course of business, in connection with a basket of 20 or more securities in which any security that is the subject of a distribution, or any reference security, does not comprise more than 5% of the value of the basket purchased; or
- 2) purchases are effected as adjustments to such basket in the ordinary course of business as a result of a change in the composition of the underlying index; and
- 3) such bids or purchases are not effected for the purpose of facilitating such tender offer.

#### **Section 11(d)(1); SEC Rules 11d1-1 and 11d1-2**

Section 11(d)(1) of the Act generally prohibits a person who is both a broker and a dealer from effecting any transaction in which the broker-dealer extends credit to a customer on any security which was part of a new issue in the distribution of which he participated as a member of a selling syndicate or group within thirty days prior to such transaction. The SEC has clarified that Section 11(d)(1) does not apply to broker-dealers that are not Authorized Participants (and, therefore, do not create Creation Unit Aggregations) that engage in both proprietary and customer transactions in Shares of a Fund in the secondary market, and for broker-dealer Authorized Participants that engage in creations of Creation Unit Aggregations. This relief is subject to specific conditions, including the condition that such broker-dealer (whether or not an Authorized Participant) does not, directly or indirectly, receive from the Fund complex any payment, compensation or other economic incentive to promote or sell the Shares of a Fund to persons outside the fund complex, other than non-cash compensation permitted under NASD Rule 2830(l)(5)(A), (B) or (C). (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.) The SEC also has taken a no-action position under Section 11(d)(1) of the Act that broker-dealers may treat Shares of a Fund, for purposes of Rule 11d1-2, as "securities issued by a registered open-end

investment company as defined in the Investment Company Act" and thereby extend credit or maintain or arrange for the extension or maintenance of credit on Shares that have been owned by the persons to whom credit is provided for more than 30 days, in reliance on the exemption contained in the rule.

**SEC Rule 15c1-5 and 15c1-6**

The SEC has taken a no-action position with respect to Rule 15c1-5 and Rule 15c1-6 as to the required disclosure of control by a broker or dealer with respect to creations and redemptions of Fund Shares and secondary market transactions therein. (See letter from Catherine McGuire, Chief Counsel, SEC Division of Market Regulation, to Securities Industry Association, Derivative Products Committee, dated November 21, 2005.)

**This Product Notice is not a statutory prospectus. Members should consult the Prospectus for a security and the security's website for relevant information.**

Please contact MEMX Regulation at [regulation@memx.com](mailto:regulation@memx.com) with any inquiries regarding this Product Notice.