



March 23, 2016

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File No. SR-BATS-2015-124, Amendment No. 3

Dear Mr. Fields:

On March 22, 2016, BATS Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission (the "Commission") Amendment No. 3 to SR-BATS-2015-124, which amended and replaced the proposal as amended by Amendments No. 1 and 2 to SR-BATS-2015-124, which were submitted on February 10, 2016 and February 12, 2016, respectively. SR-BATS-2015-124 was originally submitted on December 30, 2015. The Exchange submitted proposal SR-BATS-2015-124 in order to list and trade shares of the REX VolMAXX™ Long VIX Weekly Futures Strategy ETF and the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust under BATS Rule 14.11(i) and Amendment No. 3 in particular was filed in order to clarify certain points and add additional details to the proposal. In order to provide notice for public review of this Amendment No. 3, in addition to posting on the Exchange's public website, the Exchange is filing this comment letter with the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle Murray".

Kyle Murray  
Assistant General Counsel

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="74"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2015"/> - * <input type="text" value="124"/> Amendment No. (req. for Amendments *) <input type="text" value="3"/>
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Filing by **BATS Exchange**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/> Extension of Time Period for Commission Action * <input type="checkbox"/> Date Expires * <input type="text"/>			Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> Section 806(e)(2) * <input type="checkbox"/>	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>
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Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*   
 Title \*   
 E-mail \*   
 Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,


has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date  By

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.



SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> BATS Exchange, Inc. (the “Exchange” or “BATS”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade shares of the REX VolMAXX™ Long VIX Weekly Futures Strategy ETF and the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF (each a “Fund” and collectively, the “Funds”) of the Exchange Traded Concepts Trust (the “Trust”) under BATS Rule 14.11(i) (“Managed Fund Shares”). The shares of the Funds are referred to herein as the “Shares.”

- (a) Not applicable.
- (b) Not applicable.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange on February 11, 2014. Exchange staff will advise the Board of Directors of the Exchange of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

The persons on the Exchange staff prepared to respond to questions and comments on the proposed rule change are:

Eric Swanson  
EVP, General Counsel

Kyle Murray  
Assistant General Counsel

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

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

(913) 815-7000

(913) 815-7121

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

(a) Purpose

This Amendment No. 3 to SR-BATS-2015-124 amends and replaces in its entirety Amendment No. 1, which was filed on February 10, 2016, which was subsequently partially amended by Amendment No. 2 on February 12, 2016, which amended and replaced in its entirety the proposal as originally submitted on December 30, 2015. The Exchange submits this Amendment No. 3 in order to clarify certain points and add additional details about the Funds.

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> All statements and representations made in this 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 shall constitute continued listing requirements for listing the Shares on the Exchange. The Funds will be actively managed funds. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on July 17, 2009. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N-1A ("Registration Statement") with the Commission.<sup>4</sup> The Adviser, as defined

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<sup>3</sup> The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>4</sup> See Registration Statement on Form N-1A for the Trust, dated December 29,

below, is also registered as a Commodity Pool Operator. The REX VolMAXX™ Long VIX Weekly Futures Strategy ETF and the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF and their subsidiaries, REX VolMAXX™ Long VIX Weekly Futures Strategy Subsidiary I and REX VolMAXX™ Inverse VIX Weekly Futures Strategy Subsidiary I, respectively, each a wholly-owned subsidiary of its associated Fund are organized under the laws of the Cayman Islands (each a “Subsidiary” and, collectively, the “Subsidiaries”), will be subject to regulation by the CFTC and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Exchange Traded Concepts, LLC is the investment adviser (the “Adviser”) to the Funds. Vident Investment Advisory, LLC is the sub-adviser (the “Sub-Adviser”) to the Funds. SEI Investments Global Funds Services serves as administrator for the Trust (the “Administrator”). Brown Brothers Harriman & Co. serves as custodian, transfer agent, and dividend disbursing agent for the Trust. SEI Investments Distribution Co. (“Distributor”) serves as the distributor for the Trust.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or

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2015 (File Nos. 333-156529 and 811-22263). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 30445, April 2, 2013 (File No. 812-13969).

changes to such investment company portfolio.<sup>5</sup> In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-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

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<sup>5</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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.

REX VolMAXX Long VIX Weekly Futures Strategy ETF

According to the Registration Statement, the Fund seeks to provide investors with long exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded futures contracts based on the Chicago Board Options Exchange, Incorporated (“CBOE”) Volatility Index (the “VIX Index”) (“VIX Futures Contracts”) with weekly and monthly expirations. The price at which a VIX Futures Contract trades represents the implied reading of the VIX Index upon the expiration of the VIX Futures Contract. The VIX Index is an index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future and is calculated based on the prices of certain put and call options on the S&P 500. The VIX Index is calculated based on the premium paid by investors for certain options linked to the level of the S&P 500. During periods of market instability, the implied level of volatility of the S&P 500 typically increases and, consequently, the prices of options linked to the S&P 500 typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the reading of the VIX Index to increase.

Unlike many indexes, the VIX Index is not an investable index. Rather, the VIX Index serves as a market volatility forecast. While the Fund generally will seek exposure to the VIX Index, the Fund is not an index tracking fund and will generally seek to enhance its performance by actively selecting VIX Futures Contracts of varying



maturities for the Fund and, in fact, can be expected to perform very differently from the VIX Index over all periods of time.

#### Principal Holdings

The Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures Contracts with weekly and monthly expirations.<sup>6</sup> According to the Registration Statement, the Fund will obtain such exposure by investing, through both long and short positions, only in the following instruments: VIX Futures Contracts;<sup>7</sup> total return swap agreements that provide exposure to VIX Futures Contracts;<sup>8</sup> the securities of other

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<sup>6</sup> The Fund expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

<sup>7</sup> Consistent with the definition above, all VIX Futures Contracts held by the Fund will be exchange-traded.

<sup>8</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. To the extent that the Fund invests in swaps that are not centrally cleared, the Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Adviser will take various steps to limit counterparty credit risk, as described in the Registration Statement. The Fund's investment in over-the-counter ("OTC") derivatives, including OTC swaps, will not exceed 20% of its assets.

investment companies,<sup>9</sup> other pooled investment vehicles,<sup>10</sup> and exchange-traded notes<sup>11</sup> that provide exposure to VIX Futures Contracts; options on securities, securities indices,

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<sup>9</sup> The Fund may invest in the securities of other investment companies, including affiliated funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include the securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)). While the Fund may invest in inverse investment company securities, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities.

<sup>10</sup> Pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). While the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) pooled investment vehicles.

<sup>11</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark, or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETNs.

and currencies;<sup>12</sup> repurchase agreements<sup>13</sup> and reverse repurchase agreements;<sup>14</sup> and cash or cash equivalents (which include commercial paper<sup>15</sup> and U.S. government obligations<sup>16</sup>)<sup>17</sup> to collateralize its exposure to the VIX Futures Contracts and for

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- <sup>12</sup> All options written on indices or securities will be covered. For all OTC options, the Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. As stated above, the Fund's investment in OTC derivatives, which includes OTC options, will not exceed 20% of its assets.
- <sup>13</sup> The Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. Such procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.
- <sup>14</sup> Reverse repurchase agreements involve the sale of assets with an agreement to repurchase the assets at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. The Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 1/3% of its assets.
- <sup>15</sup> Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. The Funds may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Ratings Services ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("Moody's").
- <sup>16</sup> U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.
- <sup>17</sup> Cash or cash equivalents includes assets such as U.S. Treasury securities or overnight repurchase agreements.

investment purposes.

The Fund expects to gain exposure to certain of these investments by investing a portion of its assets in its Subsidiary. The Subsidiary will be advised by the Adviser.<sup>18</sup>

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in certain futures contracts. The Subsidiary will have the same investment objective and investment restrictions, as described in the Investment Restrictions section below, as the Fund. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary.

The Fund may lend its portfolio securities in an amount not to exceed 33 1/3% of the value of its total assets via a securities lending program through a lending agent approved by the Board, to certain creditworthy borrowers desiring to borrow securities to

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<sup>18</sup> 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 ("Board") 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.

complete transactions and for other purposes. A securities lending program allows the Fund to receive a portion of the income generated by lending its securities and investing the respective collateral. The Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day.

The Fund intends to qualify each year as a regulated investment company (a “RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>19</sup> The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. Aside from the Fund’s investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

#### Investment Restrictions

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<sup>20</sup> under the 1940 Act.<sup>21</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to

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<sup>19</sup> 26 U.S.C. 851.

<sup>20</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>21</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No.

determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (i.e. two times or three times the Fund's benchmark).

REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF

According to the Registration Statement, the Fund seeks to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded VIX Futures Contracts with weekly and monthly expirations. The price at which a VIX Futures Contract trades represents the implied reading of the VIX Index upon the expiration of the VIX Futures Contract. The VIX Index is an index designed to measure

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28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

the market price of volatility in large cap U.S. stocks over 30 days in the future and is calculated based on the prices of certain put and call options on the S&P 500. The VIX Index is calculated based on the premium paid by investors for certain options linked to the level of the S&P 500. During periods of market instability, the implied level of volatility of the S&P 500 typically increases and, consequently, the prices of options linked to the S&P 500 typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the reading of the VIX Index to increase.

Unlike many indexes, the VIX Index is not an investable index. Rather, the VIX Index serves as a market volatility forecast. While the Fund generally will seek inverse exposure to the VIX Index, the Fund is not an index tracking fund and will generally seek to enhance its performance by actively selecting VIX Futures Contracts of varying maturities for the Fund and, in fact, can be expected to perform very differently from the VIX Index over all periods of time.

#### Principal Holdings

The Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures Contracts with weekly and monthly expirations.<sup>22</sup> According to the Registration Statement, the Fund will obtain such exposure by investing, through both long and short

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<sup>22</sup> The Fund expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

positions, only in the following instruments: VIX Futures Contracts;<sup>23</sup> total return swap agreements that provide exposure to VIX Futures Contracts;<sup>24</sup> the securities of other investment companies,<sup>25</sup> other pooled investment vehicles,<sup>26</sup> and exchange-traded notes<sup>27</sup> that provide exposure to VIX Futures Contracts; options on securities, securities indices,

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<sup>23</sup> Consistent with the definition above, all VIX Futures Contracts held by the Fund will be exchange-traded.

<sup>24</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. To the extent that the Fund invests in swaps that are not centrally cleared, the Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Adviser will take various steps to limit counterparty credit risk, as described in the Registration Statement. The Fund's investment in over-the-counter ("OTC") derivatives, including OTC swaps, will not exceed 20% of its assets.

<sup>25</sup> The Fund may invest in the securities of other investment companies, including affiliated funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include the securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)). While the Fund may invest in inverse investment company securities, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities.

<sup>26</sup> Pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). While the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) pooled investment vehicles.

<sup>27</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark, or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETNs.



and currencies;<sup>28</sup> repurchase agreements<sup>29</sup> and reverse repurchase agreements;<sup>30</sup> and cash or cash equivalents (which include commercial paper<sup>31</sup> and U.S. government obligations<sup>32</sup>)<sup>33</sup> to collateralize its exposure to the VIX Futures Contracts and for

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- <sup>28</sup> All options written on indices or securities will be covered. For all OTC options, the Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. As stated above, the Fund's investment in OTC derivatives, which includes OTC options, will not exceed 20% of its assets.
- <sup>29</sup> The Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. Such procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.
- <sup>30</sup> Reverse repurchase agreements involve the sale of assets with an agreement to repurchase the assets at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. The Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 1/3% of its assets.
- <sup>31</sup> Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. The Funds may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Ratings Services ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("Moody's").
- <sup>32</sup> U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.
- <sup>33</sup> Cash or cash equivalents includes assets such as U.S. Treasury securities or overnight repurchase agreements.

investment purposes.

The Fund expects to gain exposure to certain of these investments by investing a portion of its assets in its Subsidiary. The Subsidiary will be advised by the Adviser.<sup>34</sup>

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in certain futures contracts. The Subsidiary will have the same investment objective and investment restrictions, as described in the Investment Restrictions section below, as the Fund. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary.

The Fund may lend its portfolio securities in an amount not to exceed 33 1/3% of the value of its total assets via a securities lending program through a lending agent approved by the Board, to certain creditworthy borrowers desiring to borrow securities to

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<sup>34</sup> 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 ("Board") 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.

complete transactions and for other purposes. A securities lending program allows the Fund to receive a portion of the income generated by lending its securities and investing the respective collateral. The Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day.

The Fund intends to qualify each year as a regulated investment company (a “RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>35</sup> The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. Aside from the Fund’s investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

#### Investment Restrictions

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<sup>36</sup> under the 1940 Act.<sup>37</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to

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<sup>35</sup> 26 U.S.C. 851.

<sup>36</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

<sup>37</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No.

determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (i.e. two times or three times the Fund's benchmark).

#### Net Asset Value

According to the Registration Statement, the net asset value ("NAV") of the Shares of each Fund will be calculated by dividing the value of the net assets of such Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding. Expenses and fees, including the management and administration fees, are accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund is generally determined at 4:15 p.m. Eastern Time each

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28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

business day when the Exchange is open for trading. If the Exchange or market on which the Fund's investments are primarily traded closes early, the NAV may be calculated prior to its normal calculation time. Creation/redemption transaction order time cutoffs (as further described below) would also be accelerated.

Securities and other assets held by the Funds and their respective subsidiaries are generally valued at their market price using information provided by a pricing service or market quotations. VIX Futures Contracts are generally valued at their settlement price as determined by CBOE. Listed options will generally be valued at the last sale price on the applicable exchange. Non-exchange traded derivatives, including OTC-traded options and swaps, will normally be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Repurchase agreements and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. U.S government obligations are generally priced at a quoted market price from an active market, generally the midpoint between the bid/ask quotes. Cash and cash equivalents may be valued at market values, as furnished by recognized dealers in such securities or assets. Cash and cash equivalents also may be valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Short-term debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by an independent pricing service are not readily available will be valued at amortized cost. Shares of money market mutual funds will be valued at their current Net Asset Value per

share.

Exchange-traded securities, including those exchange-traded securities of other investment companies, other pooled investment vehicles, and exchange-traded notes, generally will be valued at the official closing price on the listing exchange. Non-exchange traded investment company securities will be valued at their net asset value. Holdings of each Subsidiary will be valued as described above in determining the value of the Subsidiary used for calculating the NAV of each Fund.

For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

#### The Shares

The Funds will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof ("Creation Units") in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of at least 25,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of each Fund may trade on the secondary market in amounts less than a Creation Unit.

Although the Adviser anticipates that purchases and redemptions for Creation Units will generally be executed on an all-cash basis, the consideration for purchase of Creation Units of the Fund may consist of an in-kind deposit of a designated portfolio of securities (including any portion of such assets for which cash may be substituted) (*i.e.*, the "Deposit Assets"), and the "Cash Component" computed as described below.

Together, the Deposit Assets and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The specific terms surrounding the creation and redemption of shares are at the discretion of the Adviser.

The Deposit Assets and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the assets held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which will be an amount equal to the market value of the Deposit Assets, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Administrator will make available through the National Securities Clearing Corporation (“NSCC”) on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Asset and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Assets may change pursuant to changes in the composition of each Fund’s portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Assets may also change in response to adjustments to the weighting or composition of the holdings of the Fund.

Each Fund reserves the right to permit or require the substitution of a “cash in lieu” amount to be added to the Cash Component to replace any Deposit Asset that may

not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (“DTC”) or the clearing process through the NSCC.<sup>38</sup>

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor at a time specified by the Adviser. Initially, such orders must be received in proper form no later than 3:00 p.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The “Settlement Date” is generally the third business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

To be eligible to place orders with the Distributor to create a Creation Unit of a Fund, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC, a clearing agency that is registered with the Commission; or (ii) a DTC Participant, and, in each case, must have executed an agreement with the Trust, the Distributor and the Administrator with respect to creations and redemptions of Creation Units (“Participant Agreement”).

A standard creation transaction fee may be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

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<sup>38</sup> The Adviser represents that, to the extent the Trust permits or requires a “cash in lieu” amount, such transactions will be effected in the same or equitable manner for all authorized participants.



Shares of the Funds may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. The Administrator will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (“Fund Securities”). The redemption proceeds for a Creation Unit generally will consist of a specified amount of cash less a redemption transaction fee.

A standard redemption transaction fee may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. The Fund currently expects that such requests must be received no later than 3:00 p.m. Eastern Time on any business day, in order to receive that day’s NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized Participant Agreement.

Additional information regarding the Shares and the Funds, including investment strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the website for the Fund, as applicable.

Availability of Information

Each Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The websites will include additional quantitative information updated on a daily basis, including, for the respective Fund: (1) the prior business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>39</sup> daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information 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. On each business day, before commencement of trading in Shares during Regular Trading Hours<sup>40</sup> on the Exchange, each Fund will disclose on its website the identities and quantities of the portfolio instruments (the "Disclosed Portfolio") held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV

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<sup>39</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

<sup>40</sup> Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

at the end of the business day.<sup>41</sup> The Disclosed Portfolio will include, as applicable: ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, 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.

In addition, for each Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and 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.<sup>42</sup> In addition, the 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 dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each

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<sup>41</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>42</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (“CTA”) or other data feeds.

Fund on a daily basis and provide an estimate of that value throughout the trading day.

Intraday price quotations on U.S. government securities, commercial paper, repurchase agreements, and reverse repurchase agreements of the type held by the 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. Price information for investment company securities (other than exchange-traded investment company securities) and OTC-traded options will be available from the applicable investment company’s website and from market data vendors. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Funds. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. For VIX Futures Contracts, such intraday information is available directly from CBOE. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services. 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.

Quotation and last sale information for the Shares will be available on the facilities of the CTA.

### Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, each Fund must be in compliance with Rule 10A-3 under the Act.<sup>43</sup> A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. 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.

### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. 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 instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

### 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

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<sup>43</sup> See 17 CFR 240.10A-3.

securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

### Surveillance

The Exchange believes that its 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.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. 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, and, 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 Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares, exchange-listed options, exchange listed equity securities, and the underlying futures via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>44</sup> In addition, the Exchange is able to

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<sup>44</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing

access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). The Exchange prohibits the distribution of material non-public information by its employees.

#### Information Circular

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: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening<sup>45</sup> and After Hours Trading Sessions<sup>46</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members 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 Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to each Fund. Members purchasing Shares from the Fund for resale to investors will deliver a

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agreement. The Exchange also notes that all of the futures contracts in the Disclosed Portfolio for the Fund (including futures contracts held by the Subsidiary) will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>45</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>46</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' respective website. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>47</sup> in general and Section 6(b)(5) of the Act<sup>48</sup> 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, 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 Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule

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<sup>47</sup> 15 U.S.C. 78f.

<sup>48</sup> 15 U.S.C. 78f(b)(5).



14.11(i). The Exchange believes that its 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. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-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. The Exchange may obtain information regarding trading in the Shares and the underlying futures via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>49</sup> In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA’s TRACE.

According to the Registration Statement, the REX VolMAXX Long VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts

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<sup>49</sup> See note 44, *supra*.

to be equal to approximately 100% of Fund assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times. According to the Registration Statement, the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

Additionally, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that 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. In addition, a large amount of information is publicly available regarding each Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major

market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's website including: (1) the prior business day's reported NAV, the closing market price or the Bid/Ask Price, daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The websites for the Funds will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on securities, repurchase agreements, and reverse

repurchase agreements of the type held by the Fund 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. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. For VIX Futures Contracts, such intraday information is available directly from CBOE. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA’s TRACE. In addition, as noted above, investors will have ready access to information regarding the Fund’s holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale

information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

4. 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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

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

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange requests the Commission to find good cause to accelerate effectiveness of this proposed rule change pursuant to Section 19(b)(2) of the Act and to approve the proposed rule change prior to the 30th day after publication of the proposed rule change in the Federal Register. The Exchange believes there is good cause to grant expedited review and accelerated effectiveness of this proposal because the issues raised are similar to those raised in the proposed rule change approved by the Commission relating to listing and trading of other issues of managed fund shares listed on NYSE

Arca, Inc. (“NYSE Arca”)<sup>50</sup> based on similar benchmarks as the Fund, as well as certain Managed Fund Shares listed on the Exchange.<sup>51</sup>

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

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<sup>50</sup> See Securities Exchange Act Release Nos. 70055 (July 29, 2013), 78 FR 47037 (August 2, 2013) (SR-NYSEArca-2013-52) (order approving the listing and trading shares of the First Trust Morningstar Managed Futures Strategy Fund under NYSE Arca Rule 8.600); and 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010) (SR-NYSEArca-2010-98) (order approving the listing and trading of shares of the WisdomTree Managed Futures Strategy Fund).

<sup>51</sup> The Commission has previously approved listing and trading on the Exchange of six similar actively managed funds under Rule 14.11(i). See Securities Exchange Act Release No. 72099 (May 6, 2014), 79 FR 27023 (May 12, 2014) (SR-BATS-2014-007) (order approving Exchange listing and trading of certain funds of the ProShares Trust).

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-BATS-2015-124 Amendment No. 3)

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rule 14.11(i), Managed Fund Shares, to List and Trade Shares of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, BATS Exchange, Inc. (the “Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III 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 filed a proposal to list and trade shares of the REX VolMAXX™ Long VIX Weekly Futures Strategy ETF and the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF (each a “Fund” and collectively, the “Funds”) of the Exchange Traded Concepts Trust (the “Trust”) under BATS Rule 14.11(i) (“Managed Fund Shares”). The shares of the Funds are referred to herein as the “Shares.”

The text of the proposed rule change is available at the Exchange’s website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the

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

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

Commission's Public Reference Room.

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 Exchange 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

This Amendment No. 3 to SR-BATS-2015-124 amends and replaces in its entirety Amendment No. 1, which was filed on February 10, 2016, which was subsequently partially amended by Amendment No. 2 on February 12, 2016, which amended and replaced in its entirety the proposal as originally submitted on December 30, 2015. The Exchange submits this Amendment No. 3 in order to clarify certain points and add additional details about the Funds.

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability

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<sup>3</sup> The Commission approved BATS Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).



of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The Funds will be actively managed funds. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on July 17, 2009. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N-1A (“Registration Statement”) with the Commission.<sup>4</sup> The Adviser, as defined below, is also registered as a Commodity Pool Operator. The REX VolMAXX™ Long VIX Weekly Futures Strategy ETF and the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF and their subsidiaries, REX VolMAXX™ Long VIX Weekly Futures Strategy Subsidiary I and REX VolMAXX™ Inverse VIX Weekly Futures Strategy Subsidiary I, respectively, each a wholly-owned subsidiary of its associated Fund are organized under the laws of the Cayman Islands (each a “Subsidiary” and, collectively, the “Subsidiaries”), will be subject to regulation by the CFTC and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools.

Exchange Traded Concepts, LLC is the investment adviser (the “Adviser”) to the Funds. Vident Investment Advisory, LLC is the sub-adviser (the “Sub-Adviser”) to the Funds. SEI Investments Global Funds Services serves as administrator for the Trust (the “Administrator”). Brown Brothers Harriman & Co. serves as custodian, transfer agent,

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<sup>4</sup> See Registration Statement on Form N-1A for the Trust, dated December 29, 2015 (File Nos. 333-156529 and 811-22263). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 30445, April 2, 2013 (File No. 812-13969).

and dividend disbursing agent for the Trust. SEI Investments Distribution Co.

(“Distributor”) serves as the distributor for the Trust.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>5</sup> In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an

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<sup>5</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser, the Sub-Adviser, and their related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-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.

REX VolMAXX Long VIX Weekly Futures Strategy ETF

According to the Registration Statement, the Fund seeks to provide investors with long exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded futures contracts based on the Chicago Board Options Exchange, Incorporated (“CBOE”) Volatility Index (the “VIX Index”) (“VIX Futures Contracts”) with weekly and monthly expirations. The price at which a VIX Futures Contract trades represents the implied reading of the VIX Index upon the expiration of the VIX Futures Contract. The VIX Index is an index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future and is calculated based on the prices of certain put and call options on the S&P 500. The VIX Index is calculated based on the premium paid by investors for certain options linked to the level of the S&P 500. During periods of market instability, the implied level of volatility of the S&P 500 typically increases and, consequently, the prices of options linked to the S&P 500 typically increase (assuming all

other relevant factors remain constant or have negligible changes). This, in turn, causes the reading of the VIX Index to increase.

Unlike many indexes, the VIX Index is not an investable index. Rather, the VIX Index serves as a market volatility forecast. While the Fund generally will seek exposure to the VIX Index, the Fund is not an index tracking fund and will generally seek to enhance its performance by actively selecting VIX Futures Contracts of varying maturities for the Fund and, in fact, can be expected to perform very differently from the VIX Index over all periods of time.

#### Principal Holdings

The Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures Contracts with weekly and monthly expirations.<sup>6</sup> According to the Registration Statement, the Fund will obtain such exposure by investing, through both long and short positions, only in the following instruments: VIX Futures Contracts;<sup>7</sup> total return swap agreements that provide exposure to VIX Futures Contracts;<sup>8</sup> the securities of other

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<sup>6</sup> The Fund expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

<sup>7</sup> Consistent with the definition above, all VIX Futures Contracts held by the Fund will be exchange-traded.

<sup>8</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. To the extent that the Fund invests in swaps that are not centrally cleared, the Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Adviser will take various steps to limit counterparty credit risk, as described in the

investment companies,<sup>9</sup> other pooled investment vehicles,<sup>10</sup> and exchange-traded notes<sup>11</sup> that provide exposure to VIX Futures Contracts; options on securities, securities indices,

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Registration Statement. The Fund's investment in over-the-counter ("OTC") derivatives, including OTC swaps, will not exceed 20% of its assets.

<sup>9</sup> The Fund may invest in the securities of other investment companies, including affiliated funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include the securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)). While the Fund may invest in inverse investment company securities, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities.

<sup>10</sup> Pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). While the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) pooled investment vehicles.

<sup>11</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark, or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETNs.

and currencies;<sup>12</sup> repurchase agreements<sup>13</sup> and reverse repurchase agreements;<sup>14</sup> and cash or cash equivalents (which include commercial paper<sup>15</sup> and U.S. government obligations<sup>16</sup>)<sup>17</sup> to collateralize its exposure to the VIX Futures Contracts and for

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- <sup>12</sup> All options written on indices or securities will be covered. For all OTC options, the Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. As stated above, the Fund's investment in OTC derivatives, which includes OTC options, will not exceed 20% of its assets.
- <sup>13</sup> The Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. Such procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.
- <sup>14</sup> Reverse repurchase agreements involve the sale of assets with an agreement to repurchase the assets at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. The Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 1/3% of its assets.
- <sup>15</sup> Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. The Funds may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Ratings Services ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("Moody's").
- <sup>16</sup> U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.
- <sup>17</sup> Cash or cash equivalents includes assets such as U.S. Treasury securities or overnight repurchase agreements.

investment purposes.

The Fund expects to gain exposure to certain of these investments by investing a portion of its assets in its Subsidiary. The Subsidiary will be advised by the Adviser.<sup>18</sup>

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in certain futures contracts. The Subsidiary will have the same investment objective and investment restrictions, as described in the Investment Restrictions section below, as the Fund. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary.

The Fund may lend its portfolio securities in an amount not to exceed 33 1/3% of the value of its total assets via a securities lending program through a lending agent

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<sup>18</sup> 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 ("Board") 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.

approved by the Board, to certain creditworthy borrowers desiring to borrow securities to complete transactions and for other purposes. A securities lending program allows the Fund to receive a portion of the income generated by lending its securities and investing the respective collateral. The Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day.

The Fund intends to qualify each year as a regulated investment company (a “RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>19</sup> The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. Aside from the Fund’s investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

#### Investment Restrictions

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<sup>20</sup> under the

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<sup>19</sup> 26 U.S.C. 851.

<sup>20</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).



1940 Act.<sup>21</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (i.e. two times or three times the Fund's benchmark).

REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF

According to the Registration Statement, the Fund seeks to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-

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<sup>21</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

traded VIX Futures Contracts with weekly and monthly expirations. The price at which a VIX Futures Contract trades represents the implied reading of the VIX Index upon the expiration of the VIX Futures Contract. The VIX Index is an index designed to measure the market price of volatility in large cap U.S. stocks over 30 days in the future and is calculated based on the prices of certain put and call options on the S&P 500. The VIX Index is calculated based on the premium paid by investors for certain options linked to the level of the S&P 500. During periods of market instability, the implied level of volatility of the S&P 500 typically increases and, consequently, the prices of options linked to the S&P 500 typically increase (assuming all other relevant factors remain constant or have negligible changes). This, in turn, causes the reading of the VIX Index to increase.

Unlike many indexes, the VIX Index is not an investable index. Rather, the VIX Index serves as a market volatility forecast. While the Fund generally will seek inverse exposure to the VIX Index, the Fund is not an index tracking fund and will generally seek to enhance its performance by actively selecting VIX Futures Contracts of varying maturities for the Fund and, in fact, can be expected to perform very differently from the VIX Index over all periods of time.

#### Principal Holdings

The Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures

Contracts with weekly and monthly expirations.<sup>22</sup> According to the Registration Statement, the Fund will obtain such exposure by investing, through both long and short positions, only in the following instruments: VIX Futures Contracts;<sup>23</sup> total return swap agreements that provide exposure to VIX Futures Contracts;<sup>24</sup> the securities of other

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<sup>22</sup> The Fund expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

<sup>23</sup> Consistent with the definition above, all VIX Futures Contracts held by the Fund will be exchange-traded.

<sup>24</sup> To the extent practicable, the Fund will invest in swaps cleared through the facilities of a centralized clearing house. To the extent that the Fund invests in swaps that are not centrally cleared, the Adviser will also attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Adviser will take various steps to limit counterparty credit risk, as described in the Registration Statement. The Fund's investment in over-the-counter ("OTC") derivatives, including OTC swaps, will not exceed 20% of its assets.

investment companies,<sup>25</sup> other pooled investment vehicles,<sup>26</sup> and exchange-traded notes<sup>27</sup> that provide exposure to VIX Futures Contracts; options on securities, securities indices,

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<sup>25</sup> The Fund may invest in the securities of other investment companies, including affiliated funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include the securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)). While the Fund may invest in inverse investment company securities, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities.

<sup>26</sup> Pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). While the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) pooled investment vehicles.

<sup>27</sup> An ETN is a senior unsecured debt obligation designed to track the total return of an underlying index, benchmark, or strategy, minus investor fees. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. ETNs are registered under the Securities Act of 1933 and are redeemable to the issuer. While the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETNs.

and currencies;<sup>28</sup> repurchase agreements<sup>29</sup> and reverse repurchase agreements;<sup>30</sup> and cash or cash equivalents (which include commercial paper<sup>31</sup> and U.S. government obligations<sup>32</sup>)<sup>33</sup> to collateralize its exposure to the VIX Futures Contracts and for

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<sup>28</sup> All options written on indices or securities will be covered. For all OTC options, the Fund will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis. As stated above, the Fund's investment in OTC derivatives, which includes OTC options, will not exceed 20% of its assets.

<sup>29</sup> The Fund follows certain procedures designed to minimize the risks inherent in repurchase agreements. Such procedures include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The investments of the Fund in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.

<sup>30</sup> Reverse repurchase agreements involve the sale of assets with an agreement to repurchase the assets at an agreed-upon price, date and interest payment and have the characteristics of borrowing. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. The Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33 1/3% of its assets.

<sup>31</sup> Commercial paper is a short-term obligation with a maturity ranging from one to 270 days issued by banks, corporations and other borrowers. Such investments are unsecured and usually discounted. The Funds may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Ratings Services ("S&P") or Prime-1 or Prime-2 by Moody's Investors Service, Inc. ("Moody's").

<sup>32</sup> U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.

<sup>33</sup> Cash or cash equivalents includes assets such as U.S. Treasury securities or overnight repurchase agreements.

investment purposes.

The Fund expects to gain exposure to certain of these investments by investing a portion of its assets in its Subsidiary. The Subsidiary will be advised by the Adviser.<sup>34</sup>

The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in certain futures contracts. The Subsidiary will have the same investment objective and investment restrictions, as described in the Investment Restrictions section below, as the Fund. Except as otherwise noted, references to the Fund's investments may also be deemed to include the Fund's indirect investments through the Subsidiary. The Fund will invest up to 25% of its total assets in the Subsidiary.

The Fund may lend its portfolio securities in an amount not to exceed 33 1/3% of the value of its total assets via a securities lending program through a lending agent

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<sup>34</sup> 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 ("Board") 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.

approved by the Board, to certain creditworthy borrowers desiring to borrow securities to complete transactions and for other purposes. A securities lending program allows the Fund to receive a portion of the income generated by lending its securities and investing the respective collateral. The Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day.

The Fund intends to qualify each year as a regulated investment company (a “RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.<sup>35</sup> The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M. Aside from the Fund’s investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

#### Investment Restrictions

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<sup>36</sup> under the

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<sup>35</sup> 26 U.S.C. 851.

<sup>36</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

1940 Act.<sup>37</sup> The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns (i.e. two times or three times the Fund's benchmark).

#### Net Asset Value

According to the Registration Statement, the net asset value ("NAV") of the Shares of each Fund will be calculated by dividing the value of the net assets of such Fund (i.e., the value of its total assets less total liabilities) by the total number of Shares

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<sup>37</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).



of the Fund outstanding. Expenses and fees, including the management and administration fees, are accrued daily and taken into account for purposes of determining NAV. The NAV of each Fund is generally determined at 4:15 p.m. Eastern Time each business day when the Exchange is open for trading. If the Exchange or market on which the Fund's investments are primarily traded closes early, the NAV may be calculated prior to its normal calculation time. Creation/redemption transaction order time cutoffs (as further described below) would also be accelerated.

Securities and other assets held by the Funds and their respective subsidiaries are generally valued at their market price using information provided by a pricing service or market quotations. VIX Futures Contracts are generally valued at their settlement price as determined by CBOE. Listed options will generally be valued at the last sale price on the applicable exchange. Non-exchange traded derivatives, including OTC-traded options and swaps, will normally be valued on the basis of quotations or equivalent indication of value supplied by a third-party pricing service or broker-dealer who makes markets in such instruments. Repurchase agreements and reverse repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. U.S government obligations are generally priced at a quoted market price from an active market, generally the midpoint between the bid/ask quotes. Cash and cash equivalents may be valued at market values, as furnished by recognized dealers in such securities or assets. Cash and cash equivalents also may be valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Short-term debt securities with remaining

maturities of sixty days or less for which market quotations and information furnished by an independent pricing service are not readily available will be valued at amortized cost. Shares of money market mutual funds will be valued at their current Net Asset Value per share.

Exchange-traded securities, including those exchange-traded securities of other investment companies, other pooled investment vehicles, and exchange-traded notes, generally will be valued at the official closing price on the listing exchange. Non-exchange traded investment company securities will be valued at their net asset value. Holdings of each Subsidiary will be valued as described above in determining the value of the Subsidiary used for calculating the NAV of each Fund.

For more information regarding the valuation of Fund investments in calculating the Fund's NAV, see the Registration Statement.

### The Shares

The Funds will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof ("Creation Units") in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of at least 25,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of each Fund may trade on the secondary market in amounts less than a Creation Unit.

Although the Adviser anticipates that purchases and redemptions for Creation Units will generally be executed on an all-cash basis, the consideration for purchase of

Creation Units of the Fund may consist of an in-kind deposit of a designated portfolio of securities (including any portion of such assets for which cash may be substituted) (*i.e.*, the “Deposit Assets”), and the “Cash Component” computed as described below.

Together, the Deposit Assets and the Cash Component constitute the “Fund Deposit,” which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The specific terms surrounding the creation and redemption of shares are at the discretion of the Adviser.

The Deposit Assets and Fund Securities (as defined below), as the case may be, in connection with a purchase or redemption of a Creation Unit, generally will correspond pro rata, to the extent practicable, to the assets held by the Fund.

The Cash Component will be an amount equal to the difference between the NAV of the Shares (per Creation Unit) and the “Deposit Amount,” which will be an amount equal to the market value of the Deposit Assets, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. The Administrator will make available through the National Securities Clearing Corporation (“NSCC”) on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Asset and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for the Fund.

The identity and number or par value of the Deposit Assets may change pursuant to changes in the composition of each Fund’s portfolio as rebalancing adjustments and corporate action events occur from time to time. The composition of the Deposit Assets may also change in response to adjustments to the weighting or composition of the

holdings of the Fund.

Each Fund reserves the right to permit or require the substitution of a “cash in lieu” amount to be added to the Cash Component to replace any Deposit Asset that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (“DTC”) or the clearing process through the NSCC.<sup>38</sup>

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor at a time specified by the Adviser. Initially, such orders must be received in proper form no later than 3:00 p.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The “Settlement Date” is generally the third business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

To be eligible to place orders with the Distributor to create a Creation Unit of a Fund, an entity must be (i) a “Participating Party,” i.e., a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the NSCC, a clearing agency that is registered with the Commission; or (ii) a DTC Participant, and, in each case, must have executed an agreement with the Trust, the

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<sup>38</sup> The Adviser represents that, to the extent the Trust permits or requires a “cash in lieu” amount, such transactions will be effected in the same or equitable manner for all authorized participants.

Distributor and the Administrator with respect to creations and redemptions of Creation Units (“Participant Agreement”).

A standard creation transaction fee may be imposed to offset the transfer and other transaction costs associated with the issuance of Creation Units.

Shares of the Funds may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. The Administrator will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (“Fund Securities”). The redemption proceeds for a Creation Unit generally will consist of a specified amount of cash less a redemption transaction fee.

A standard redemption transaction fee may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. The Fund currently expects that such requests must be received no later than 3:00 p.m. Eastern Time on any business day, in order to receive that day’s NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized Participant Agreement.

Additional information regarding the Shares and the Funds, including investment

strategies, risks, creation and redemption procedures, fees and expenses, portfolio holdings disclosure policies, distributions, taxes and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statement or on the website for the Fund, as applicable.

#### Availability of Information

Each Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The websites will include additional quantitative information updated on a daily basis, including, for the respective Fund: (1) the prior business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>39</sup> daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information 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. On each business day, before commencement of trading in Shares

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<sup>39</sup> The Bid/Ask Price of the Fund will be determined using the midpoint of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

during Regular Trading Hours<sup>40</sup> on the Exchange, each Fund will disclose on its website the identities and quantities of the portfolio instruments (the “Disclosed Portfolio”) held by the Fund and the Subsidiary that will form the basis for the Fund’s calculation of NAV at the end of the business day.<sup>41</sup> The Disclosed Portfolio will include, as applicable: ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, 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.

In addition, for each Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the “Intraday Indicative Value,” that reflects an estimated intraday value of the Fund’s portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and 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.<sup>42</sup> In addition, the 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

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<sup>40</sup> Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

<sup>41</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day (“T”) will be booked and reflected in NAV on the current business day (“T+1”). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

<sup>42</sup> Currently, it is the Exchange’s understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (“CTA”) or other data feeds.

which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours.

The dissemination of the Intraday Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide an estimate of that value throughout the trading day.

Intraday price quotations on U.S. government securities, commercial paper, repurchase agreements, and reverse repurchase agreements of the type held by the 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. Price information for investment company securities (other than exchange-traded investment company securities) and OTC-traded options will be available from the applicable investment company's website and from market data vendors. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Funds. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. For VIX Futures Contracts, such intraday information is available directly from CBOE. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other



electronic services. 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.

Quotation and last sale information for the Shares will be available on the facilities of the CTA.

#### Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, each Fund must be in compliance with Rule 10A-3 under the Act.<sup>43</sup> A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. 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.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. 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 instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also

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<sup>43</sup> See 17 CFR 240.10A-3.

will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

#### 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. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is \$0.01.

#### Surveillance

The Exchange believes that its 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.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. 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, and, 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 Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares, exchange-listed options, exchange listed equity securities, and the underlying futures via the Intermarket Surveillance Group ("ISG") from other exchanges who are

members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>44</sup> 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 ("TRACE"). The Exchange prohibits the distribution of material non-public information by its employees.

#### Information Circular

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: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening<sup>45</sup> and After Hours Trading Sessions<sup>46</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that

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<sup>44</sup> For a list of the current members and affiliate members of ISG, [see www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also notes that all of the futures contracts in the Disclosed Portfolio for the Fund (including futures contracts held by the Subsidiary) will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>45</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>46</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

members 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 Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to each Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that each Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' respective website. In addition, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>47</sup> in general and Section 6(b)(5) of the Act<sup>48</sup> 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

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<sup>47</sup> 15 U.S.C. 78f.

<sup>48</sup> 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, 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 Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its 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. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. Neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer. In the event that (a) the Adviser or Sub-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. The Exchange may obtain information regarding trading in the Shares and the underlying futures via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has

entered into a comprehensive surveillance sharing agreement.<sup>49</sup> In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

According to the Registration Statement, the REX VolMAXX Long VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

According to the Registration Statement, the REX VolMAXX™ Inverse VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of Fund assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

Additionally, each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment). The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order 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. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

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<sup>49</sup> See note 44, supra.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that 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. In addition, a large amount of information is publicly available regarding each Fund and the Shares, thereby promoting market transparency. Moreover, the Intraday Indicative Value will be disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. On each business day, before commencement of trading in Shares during Regular Trading Hours, each Fund will disclose on its website the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Pricing information will be available on the Fund's website including: (1) the prior business day's reported NAV, the closing market price or the Bid/Ask Price, daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Additionally, information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information for the Shares will be available on the facilities of the CTA. The websites for the Funds will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Fund will be halted under the conditions specified in BATS Rule 11.18. Trading may

also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Finally, trading in the Shares will be subject to BATS Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding each Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on securities, repurchase agreements, and reverse repurchase agreements of the type held by the Fund 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. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. Pricing information related to money market fund shares will be available through issuer websites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. For VIX Futures Contracts, such intraday information is available directly from CBOE. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and



the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement as well as trade information for certain fixed income instruments as reported to FINRA's TRACE. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

(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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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 (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such 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 proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-BATS-2015-124 Amendment No. 3 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.

All submissions should refer to File No. SR-BATS-2015-124 Amendment No. 3. 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 am and 3:00 pm. 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-BATS-2015-124 Amendment No. 3 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>50</sup>

Robert W. Errett  
Deputy Secretary

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<sup>50</sup> 17 CFR 200.30-3(a)(12).