SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68619; File No. SR-BATS-2012-044)

January 10, 2013

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of Proposed Rule Change to Amend BATS Rule 14.11, Entitled "Other Securities," and to List and Trade Shares of Certain ProShares Products

I. Introduction

On November 5, 2012, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend BATS Rule 14.11, entitled "Other Securities," and to list and trade shares of certain ProShares products. The proposed rule change was published for comment in the Federal Register on November 26, 2012.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend its rules to allow listing of certain exchange-traded products based on provisions substantially similar to those on NYSE MKT LLC (formerly the American Stock Exchange LLC or "AMEX") and NYSE Arca Equities, Inc. ("NYSE Arca"). Specifically, the Exchange proposes to modify BATS Rule 14.11(f), which governs the listing of Trust Issued Receipts ("TIRs"), to adopt new criteria for listing TIRs that invest in "Investment Shares" or "Financial Instruments," as proposed to be defined. The Exchange proposes to add subparagraph (4) to Rule 14.11(f). The proposed subparagraph (4) is based on Commentary .07

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

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 68257 (November 19, 2012), 77 FR 70500 ("Notice").

of AMEX Rule 1202 and Commentary .02 of NYSE Arca Rule 8.200 and is intended to accommodate future listing and trading of TIRs that invest in Investment Shares or Financial Instruments. Any new listing or trading of an issue of such TIRs, however, will be subject to the approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Act[4] and Rule 19b-4 thereunder.[5] In addition, the Exchange proposes to amend Rule 14.11 to allow TIRs to trade until the end of the Exchange's after market session, which ends at 5:00 p.m. E.T.,. The Exchange also proposes to make certain changes so that its rules conform to the listing rules of other exchanges and to make certain non-substantive changes and corrections to existing rule text.

In addition to the above enumerated proposed changes, the Exchange further proposes to list and trade shares ("Shares") of the following pursuant to proposed Rule 14.11(f): ProShares Managed Futures Strategy; ProShares Commodity Managed Futures Strategy; and ProShares Financial Managed Futures Strategy (each a "Fund," and together, "Funds").[6] Each Fund is a series of the ProShares Trust II ("Trust"), a Delaware statutory trust. ProShare Capital Management LLC ("Sponsor") is the Trust's Sponsor, and Wilmington Trust Company is the Trust's trustee. Brown Brothers Harriman & Co. serves as the administrator ("Administrator"), custodian, and transfer agent of the Funds. SEI Investments Distribution Co. serves as distributor of the Shares.[7]

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[4] 15 U.S.C. 78s(b)(2).

[5] 17 CFR 240.19b-4.

[6] See the Trust's Registration Statement on Form S-1, dated November 29, 2011, as amended (File No. 333-178212) ("Registration Statement").

[7] The Commission approved the listing and trading of shares of the Funds on NYSE Arca. See Securities Exchange Act Release No. 66334 (February 6, 2012), 77 FR 7219 (February 10, 2012) (SR-NYSEArca-2011-94) (order approving NYSE Arca listing and trading of the Shares of the Funds). Although the Shares of the Funds were approved for

Proposed Listing Rules

The Exchange proposes to adopt definitions for the terms "Investment Shares," "futures contract," "forward contract," and "Financial Instruments" for purposes of Rule 14.11(f)(4).[8]

The proposed listing requirements include a designation requirement. Specifically, the proposed rules provide that the Exchange may list and trade TIRs investing in Investment Shares or Financial Instruments and that each issue of a TIR based on a particular Investment Share or Financial Instrument shall be designated as a separate series and identified by a unique symbol.

When the Exchange is the primary listing exchange for a trust that issues TIRs that invest in Investment Shares or Financial Instruments, the trust will be subject to the initial and continued listing criteria under proposed Rule 14.11(f)(4), as well as Rules 14.11(f)(1) and (2), as proposed to be amended. In particular, the proposed initial listing criteria provide that the Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Exchange. The proposed continued listing criteria provide that the Exchange may consider delisting or removal from listing TIRs under any of the following circumstances:

- If following the initial twelve month period following the commencement of trading of the receipts, (1) the trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of TIRs for 30 or more consecutive trading days; (2) the trust has fewer than 50,000 receipts issued and outstanding; or (3) the market value of all receipts issued and outstanding is less than $1 million.

listing and trading on NYSE Arca, the Shares have not commenced trading.

8 See Notice, supra note 3, for more information on the proposed defined terms.

- If the level or value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its website to any such asset or investment value.
- If the Intraday Indicative Value ("IIV") is no longer made available on at least a 15-second delayed basis.
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

In addition, the Exchange will remove TIRs from listing and trading upon termination of a trust. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of securities in the trust falls below a specified amount. The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A-3 under the Exchange Act.[9]

Further, the Exchange proposes to require that the term of a trust shall be as stated in the prospectus; however, such entity may be terminated earlier under such circumstances as may be specified in the prospectus. The Exchange also proposes to add the defined term "Trustee" to Rule 14.11(f)(1), along with certain requirements for the Trustee.[10]

The Exchange also proposes to add to Rule 14.11 a new subparagraph (f)(4)(C)(v), which states that voting rights shall be as set forth in the applicable trust prospectus.

In addition, the Exchange proposes a new sub-paragraph (D), which sets forth certain restrictions on Members acting as registered Market Makers in TIRs that invest in Investment Shares or Financial Instruments to facilitate surveillance. Rule 14.11(f)(4)(D)(i) will require that a registered Market Maker in TIRs must file with the Exchange, in a manner prescribed by the

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9 17 CFR 240.10A-3.

10 See Notice, supra note 3, for more information on such requirements for the Trustee.

Exchange, and keep current, a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. The rule will also prohibit a registered Market Maker in the TIRs from trading in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which the registered Market Maker, directly or indirectly, controls trading activities or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by the rule. Finally, Rule 14.11(f)(4)(D)(ii) will require that Market Makers handling shares of TIRs provide the Exchange with such books, records, or other information pertaining to transactions in the same, as may be requested by the Exchange.

The Exchange also proposes to adopt Rule 14.11(f)(4)(E) related to limitation of liability.[11] The Exchange further proposes to adopt Rule 14.11(f)(4)(F), which would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading TIRs based on separate Investment Shares or Financial Instruments.

In addition to the new subparagraph (f)(4) to Rule 14.11, the Exchange proposes to make additional substantive modifications to Rule 14.11(f) in order to conform to AMEX and NYSE Arca rules related to TIRs. First, the Exchange proposes to delete current subparagraph (f)(2)(B) of Rule 14.11, which sets forth criteria that are not included in the equivalent TIR rules of AMEX (AMEX Rule 1202) and NYSE Arca (NYSE Arca Rule 8.200). Subparagraph (f)(2)(B) of Exchange Rule 14.11 governs the eligibility of certain component securities that have already been included as component securities in the applicable series of TIRs or have been received as part of a merger, consolidation, corporate combination, or other event. Rather than apply

[11] See Notice, supra note 3, for additional details on the proposed provision related to limitation of liability.

different criteria to such securities, the Exchange proposes to apply the criteria of Rule 14.11(f)(2)(G) (to be re-numbered as (f)(3)) to all component securities of a TIR listed on the Exchange. Since this change will help to align the Exchange's rules applicable to TIRs with the rules of AMEX and NYSE Arca, it should help to alleviate confusion amongst issuers.

Second, in order to align the Exchange's rules with NYSE Arca Rule 8.200, the Exchange proposes to eliminate the requirement of current Rule 14.11(f)(2)(E)(iv) that the Exchange receive prior notice and provide approval before a change can be made to the trustee of a listed TIR

Third, the Exchange proposes to eliminate the requirement in Rule 14.11(f)(2)(F) that transactions in TIRs may only be made in round lots of 100 receipts or round lot multiples. As with the proposed changes above, this change will align the Exchange's rules with AMEX Rule 1202 and NYSE Arca Rule 8.200, which do not limit transactions in TIRs to round lots. Further, to the extent a specific TIR should be limited to trading in round lots, the Exchange has general authority pursuant to Exchange Rule 11.2 to limit transactions accordingly.[12]

The Exchange also proposes certain other technical changes, which can be found in the Notice.[13]

<u>Trading Rules</u>

The Exchange deems the TIRs to be equity securities, thus rendering trading in the securities subject to the Exchange's existing rules governing the trading of equity securities. The TIRs will trade on the Exchange from 8:00 a.m. to 5:00 p.m. E.T. (Pre-Opening Session, Regular Trading Hours, and After Hours Trading Session). The Exchange represents that it has

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12 As set forth in Exchange Rule 11.2, "[a]ll securities designated for trading are eligible for odd-lot, round-lot and mixed-lot executions, unless otherwise indicated by the Exchange or limited pursuant to [the Exchange's] Rules."

13 <u>See</u> Notice, <u>supra</u> note 3, for additional details on such technical changes.

appropriate rules to facilitate transactions in the TIRs during all trading sessions. The minimum price increment for quoting and entry of orders in equity securities traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price increment for order entry is $0.0001.[14]

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 TIRs. The Exchange represents that it will halt trading in the TIRs 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 TIRs inadvisable. These may include: (1) the extent to which trading is not occurring in the TIRs and/or the underlying asset or assets; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If any of the IIV, the level of the underlying index, or the value of the underlying assets of the TIRs is not disseminated as required, the Exchange may halt trading during the day in which such interruption to the dissemination occurs. If an interruption to the dissemination of the IIV, the level of the underlying index, or the value of the underlying assets of the TIRs persists past the trading day in which it occurred, the Exchange represents that it will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the Net Asset Value ("NAV") with respect to a series of the TIRs is not disseminated to all market participants at the same time, it represents that it will halt trading in such series until such time as the NAV is available to all market participants.

Surveillance

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14 See Rule 11.11(a).

The Exchange represents that its surveillance procedures are adequate to address any concerns about the trading of the TIRs on the Exchange. Trading of the TIRs on the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange may obtain information 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. The Exchange provides that it prohibits the distribution of material, non-public information by its employees.

Suitability

Currently, BATS Rule 3.7 governs Recommendations to Customers, and Chapter III generally governs Rules of Fair Practice. Prior to the commencement of trading of any TIRs, the Exchange represents that it will remind its Members of the suitability requirements of BATS Rule 3.7 in an Information Circular.

FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities, as described in FINRA Regulatory Notices 09-31 (June 2009), 09-53 (August 2009) and 09-65 (November 2009) (together, "FINRA Regulatory Notices"). The Exchange provides that its Members that carry customer accounts will be required to follow the FINRA guidance set forth in the FINRA Regulatory Notices. The Information Circular will reference the FINRA Regulatory Notices regarding sales practice and customer margin requirements for FINRA members applicable to inverse, leveraged, and inverse leveraged securities and options on such securities.

The Exchange notes that, for inverse, leveraged, and inverse leveraged securities, the corresponding funds seek leveraged, inverse, or leveraged inverse returns on a daily basis, and do not seek to achieve their stated investment objective over a period of time greater than one day because compounding prevents the funds from perfectly achieving such results. Accordingly, results over periods of time greater than one day typically will not be a leveraged multiple (+200%), the inverse (-100%) or a leveraged inverse multiple (-200%) of the period return of the applicable benchmark and may differ significantly from these multiples. The Exchange's Information Circular, as well as the applicable registration statement, will provide information regarding the suitability of an investment in such securities.

Description of the Shares and the Funds

The Funds will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Futures Index ("DFI" or "Index") or to a sub-index of the Index ("Sub-Index"). The ProShares Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the DFI. The ProShares Commodity Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Commodities Futures Index ("DCFI"), a Sub-Index of the DFI. The ProShares Financial Managed Futures Strategy will seek to provide investment results (before fees and expenses) that correspond to the performance of the S&P Dynamic Financial Futures Index ("DFFI"), another Sub-Index of the DFI.

As mentioned above, the Commission has previously approved the listing and trading of the Funds on NYSE Arca.[15] Since approving the listing and trading of the Funds on NYSE Arca, the structure of the Index and its Sub-Indexes have not changed, and the underlying components remain the same. However, how the Index is administered has changed in the following manner:

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15 See supra note 7.

- Rebalancing and positioning now occur on a component by component basis, rather than by sector.
- Energy components can now be held in long or short positions, rather than just long or flat (as further described herein).[16]
- Components are set to their annual weights on a monthly basis, as opposed to the previous sector structure in which the component weights floated throughout the year within the sector weights, which were reset monthly.

Other than the foregoing, no other aspect of the Index or Sub-Indexes is changing.

The Index and each Sub-Index were developed by Standard & Poor's and are long/short rules-based investable indexes designed to capture the economic benefit derived from both rising and declining trends in futures prices.[17] The Index is composed of unleveraged positions in U.S. exchange-traded futures contracts on sixteen different tangible commodities ("Commodity Futures Contracts"), as well as U.S. exchange-traded futures contracts on eight different financials, such as major currencies and U.S. Treasury securities ("Financial Futures Contracts" and together with the Commodity Futures Contracts, "Index Components").[18] Commodity Futures Contracts and Financial Futures Contracts each comprise a Sub-Index of the Index: the DCFI and the DFFI, respectively (together, "Sub-Indexes").

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16 As previously approved, all sectors other than energy could go long and short.

17 Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes.

18 The Index Components are traded on the Chicago Mercantile Exchange, Inc. ("CME"), COMEX (a division of CME), Chicago Board of Trade ("CBOT," a division of CME), NYMEX (a division of CME), and ICE Futures US ("ICE") (collectively, "Futures Exchanges").

Previously, the Index and the DCFI were designed such that the energy components would only be set long or flat (i.e., zero weight), rather than long or short. The rationale for this was the heightened potential for significant losses in the event of a supply disruption of certain energy markets. The Index and the DCFI have been redesigned to allow energy components to be set long or short. The primary considerations in this determination were:

- Potential losses are mitigated by the limited weight attributable to any single energy component.
- The magnitude of energy market price movements during previous major market supply disruptions (e.g., the Gulf Wars) does not support restricting short energy positions.

In order to achieve the investment objective of the Funds, the Sponsor will invest in: (i) exchange-traded futures contracts of the type comprising the Index or Sub-Indexes, as applicable ("Futures Contracts");[19] and/or (ii) under limited circumstances (as further described herein), swap agreements whose value is derived from the level of the Index, a Sub-Index, one or more Index Components, or, in the case of currency-based Financial Futures Contracts, the exchange rates underlying such Financial Futures Contracts, or invest in other futures contracts or swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index or Sub-Indexes or any Index Component and will further the investment objective of the Fund. Each Fund may also invest in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities) for direct investment or as

[19] Futures Contracts will be the same type of contracts as the Index Components, but the expiration dates of such Futures Contracts may differ from the expiration dates of the Index Components at any given point in time.

collateral for the Futures Contracts or swap agreements. The Sponsor does not expect that the Funds will invest directly in any commodity or currency.

Each Fund will seek to achieve its investment objective by investing, under normal market circumstances,[20] in exchange-traded Futures Contracts. In the event position accountability rules or position limits with respect to a Futures Contract are reached with respect to a Fund, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps whose value is derived from the level of the Index, a Sub-Index, one or more Index Components, or, in the case of currency-based Financial Futures Contracts, the exchange rates underlying such Financial Futures Contracts, or invest in other futures contracts or swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index, the Sub-Indexes, or any Index Component and will further the investment objective of the Funds.[21] The Funds may also invest in swaps if the market for a specific Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack, or an act of God) or disruptions (e.g., a trading halt or a flash crash) that would prevent the Funds from obtaining the appropriate amount of investment exposure to the affected Futures Contracts or other futures contracts directly.[22]

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[20] The term "under normal market circumstances" includes, but is not limited to, the absence of extreme volatility or trading halts in the futures markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[21] To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[22] The Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

The Index and the Sub-Indexes

The Index is composed of the Index Components, representing unleveraged long or short positions in U.S. exchange-traded futures contracts in the commodity and financial markets.[23] Index Components are chosen based on fundamental characteristics and liquidity. The Commodity Futures Contracts comprise the DCFI as described below, and the Financial Futures Contracts comprise the DFFI, as described below.

Weightings of the Commodity Futures Contracts are based on generally known world production levels, as adjusted to limit the impact of the energy-related Index Components. Weightings of the Financial Futures Contracts are based on, but not directly proportional to, gross domestic product ("GDP").[24]

The positions the Index (and accordingly, each Sub-Index) takes in the Index Components are not long-only, but are set by component long or short, based on the relation of the current price input of each Index Component with a seven-month weighted moving average of the price inputs of the same Index Component.

Determining the Long/Short Positioning of the Index Components

The rules for the Index and each Sub-Index regarding long or short positions are summarized as follows:

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23 As set forth in the Index weighting scheme example below, the commodity portion of the Index consists of multiple commodities (e.g., Energy, Industrial Metals) and each commodity is assigned a percentage weight. Similarly, the financial markets portion of the Index consists of multiple foreign currency and U.S. Treasury sectors (e.g., Australian dollar, U.S. Treasury Notes), each with an assigned component weight.

24 For initial 2012 weighting schemes for the Index and each Sub-Index and information about the exchange and trading hours for each Futures Contract, see Notice, supra note 3.

- Long positions are tracked when an Index Component's current one-month price change is greater than or equal to the exponential weighted average of the past seven monthly price inputs.
- Short positions are tracked when an Index Component's current one-month price change is less than the exponential weighted average of the past seven monthly price inputs.

Monthly long or short positions are determined on the second to last DFI business day of the month (defined as the position determination date, or PDD) when the monthly percentage change of an Index Component's price is compared to past monthly price changes, exponentially weighted to give greatest weight to the most recent return and least weight to the return seven months prior.[25] The weighted sum of the percentage changes of all Index Component prices equals the daily movement of the Index.

Index Component Rebalancing

Index Component weights are fixed each year and rebalanced back to their annual base weight monthly. During this monthly rebalancing, the Index will also "roll" certain of its positions from the current contract to a contract further from settlement.[26]

Additional details regarding the Trust, Funds, Shares, trading policies and investment strategies of the Funds, creations and redemption procedures, fees, investment risks, Index and

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[25] See Notice, supra note 3, for more information about how an exponential average is created for comparison purposes.

[26] The Index is composed of Index Components, which are futures contracts. In order to maintain consistent exposure to the Index Components, each Index Component contract must be sold prior to its expiration date and replaced by a contract maturing at a specified date in the future. This process is known as rolling. Index Component contracts are rolled periodically. The rolls are implemented pursuant to a roll schedule over a five-day period from the first through the fifth Index business days of the month. An Index business day is any day on which the majority of the Index Components are open for official trading and official settlement prices are provided, excluding holidays and weekends.

Sub-Indexes, NAV calculation, the dissemination and availability of information about the underlying assets, trading halts, applicable trading rules, surveillance, and the Information Bulletin, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[27]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act[28] and the rules and regulations thereunder applicable to a national securities exchange.[29] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[30] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

Proposed Changes to Rule 14.11

The Commission finds the proposal to align Rule 14.11 to the rules of AMEX and NYSE Arca (including the related non-substantive, conforming, and technical changes) consistent with Sections 6(b)(5) of the Act. As discussed above, the proposed changes to Rule 14.11 and the proposed adoption of Rule 14.11(f) would conform to similar standards for the listing and trading of TIRs on AMEX and NYSE Arca. The Commission notes that the listing requirements as

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27 See Notice and Registration Statement, supra notes 3 and 6, respectively.

28 15 U.S.C. 78f.

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

30 15 U.S.C. 78f(b)(5).

proposed would be at least as stringent as those of AMEX and NYSE Arca. In addition, the proposed rule change is based on representations governing suitability, surveillance, the issuance of Information Circulars, and circumstances pursuant to which trading should be halted, among more general trading rules governing TIRs. The Commission believes these aspects of the proposal present no novel issues or significant regulatory concerns. The proposed rules should enhance competition in the marketplace to the benefit of investors.

Listing and Trading of the Shares

The Commission finds that the aspect of the proposal to list and trade the Shares on the Exchange is also consistent with Section 11A(a)(1)(C)(iii) of the Act,[31] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

The Commission notes that the Funds and the Shares must comply with the requirements of proposed BATS Rule 14.11(f) to be listed and traded on the Exchange. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line.

The IIV, which reflects a current estimated intraday value of Futures Contracts and other applicable holdings, cash, and receivables, less liabilities of each Fund, will be widely disseminated on a per Share basis by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[32] The IIV will be updated during Regular Trading Hours when applicable Futures Exchanges are trading any Futures Contracts

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31 15 U.S.C. 78k-1(a)(1)(C)(iii).

32 According to the Exchange, several major market data vendors display and/or make widely available IIVs published via the CTA or other data feeds.

held by the Funds. However, the IIV that will be disseminated between 11:50 a.m. E.T. and the end of Regular Trading Hours will be impacted by static values for certain Futures Contracts.[33] For each Fund, the IIV will be calculated throughout Regular Trading Hours, using the prior day's closing NAV of such Fund as a base, and updated throughout the trading day as each Fund's Futures Contracts, cash equivalents, swap agreements, if applicable, and other applicable holdings change in value.

Each Fund's total portfolio composition will be disclosed on such Fund's website or another relevant website as determined by the Trust and/or the Exchange. The Trust will provide website disclosure of portfolio holdings daily and will include, as applicable, the names, notional value (in U.S. dollars) and number of Futures Contracts or units of swaps held by a Fund, if any, cash equivalents, and the amount of cash held in the portfolio of each Fund. This public website disclosure of the portfolio composition of the Funds will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants, so that all market participants are provided portfolio composition information at the same time.

The NAV for the Funds will be calculated daily by the Administrator at 3:00 p.m. E.T. and will be disseminated daily to market participants. Additionally, the Exchange will make available on its website daily trading volume of the Shares. Daily trading volume information will also be available in the financial section of newspapers, their related websites or other financial websites, through subscription services, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major

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[33] The value of the IIV will be based on the underlying Futures Contracts. Once a particular Futures Contract settles, a static closing value for that Futures Contract will be used to calculate the IIV, which will continue to update based on any other futures contracts that have not reached their settlement time. The IIV should not be viewed as an actual real-time update of the NAV because NAV is calculated only once each trading day at 3:00 p.m. E.T. In addition, the IIV also should not be viewed as a precise value of the Shares.

public websites.

The intraday, closing, and settlement prices of the Futures Contracts are also readily available, as applicable, from the respective Futures Exchanges. The website for the Funds will include a form of the prospectus for the Funds, additional data relating to NAV, and other applicable quantitative information. The daily closing Index level and the percentage change in the daily closing Index level for the Index and each Sub-Index will be publicly available from one or more major market data vendors. Data regarding the Index and each Sub-Index, updated every 15 seconds during Regular Trading Hours, is also available from Standard & Poor's on a subscription basis. Several independent data vendors also package and disseminate Index and Sub-Index data in various value-added formats (including vendors displaying both Index constituents and Index levels and vendors displaying Index levels only). Data regarding the Index Components is also available from the websites of the Futures Exchanges. Data regarding the commodities, currencies, and Treasury securities underlying the Index Components is publicly available from various financial information service providers.

The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation (prior to listing of Shares of each Fund) from the Trust that the NAV per Share will be calculated daily and made available to all market participants at the same time. In addition, if the Exchange becomes aware that the NAV with respect to a series of the TIRs is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.[34] Trading in the Shares will also be subject to BATS Rule 11.18, which sets forth circumstances under which Shares of the Funds may be halted.[35] If any of the IIV, the level of the underlying index, or the value of the underlying assets of the TIRs is not being disseminated as required, the Exchange may halt trading during the day in which such interruption to the dissemination occurs. If an interruption to the dissemination of the IIV, the value of the underlying index, or the value of the underlying assets of the TIRs persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.[36] Further, the Commission notes that the Exchange states that it prohibits the distribution of material, non-public information by its employees.[37] Finally, with respect to the Index and Sub-Indexes, Standard & Poor's is not a broker-dealer, is not affiliated with a broker-dealer, and has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes.

The Exchange further represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) For initial and/or continued listing of the Shares, the Funds must be in compliance with

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[34] See Notice, supra note 3.

[35] See BATS Rule 11.18. The Exchange further represents that 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 futures contracts and/or the financial instruments comprising the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[36] See BATS Rule 14.11(f)(4)(C)(ii) (providing additional considerations for the removal from listing of TIRs on the Exchange).

[37] See Notice, supra note 3.

Exchange Rule 14.11(f) and Rule 10A-3 under the Act.[38]

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include TIRs, 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 applicable federal securities laws. The Exchange is able to obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[39] In addition, for components traded on exchanges, not more than 10% of the weight of a Fund's portfolio in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. All Futures Contracts will be traded on a trading market that is a member of ISG or is a market with which the Exchange has a comprehensive surveillance sharing agreement.

(4) Prior to the commencement of trading of the Shares, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, BATS Rule 3.7 provides that, in recommending transactions in the Shares, a Member must have reasonable grounds for believing that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such Member, and (b) the customer can evaluate the special characteristics,

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38 See 17 CFR 240.10A-3.

39 See Notice, supra note 3.

and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Circular will also provide that Members must make reasonable efforts to obtain the following information: (a) the customer's other securities holdings; (b) the customer's financial situation and needs; (c) the customer's investment objectives; and (d) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

(5) Each Fund will seek to achieve its investment objective by investing, under normal market circumstances, in exchange-traded Futures Contracts. In the event position accountability rules or position limits with respect to a Futures Contract are reached with respect to a Fund, the Sponsor may, in its commercially reasonable judgment, cause such Fund to obtain exposure through swaps whose value is derived from the level of the Index, a Sub-Index, one or more Index Components, or, in the case of currency-based Financial Futures Contracts, the exchange rates underlying such Financial Futures Contracts or invest in other futures contracts or swaps if such instruments tend to exhibit trading prices or returns that correlate with the Index, the Sub-Indexes, or any Index Component and will further the investment objective of the Funds. The Funds may also invest in swaps if the market for a specific Futures Contract experiences emergencies (e.g., natural disaster, terrorist attack, or an act of God) or disruptions (e.g., a trading halt or a flash crash) that would prevent the Funds from obtaining the appropriate amount of investment exposure to the affected Futures Contracts or other futures contracts directly.

(6) To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. In addition, the Sponsor will also attempt to mitigate the Funds' credit risk by transacting only with large, well-capitalized institutions using

measures designed to determine the creditworthiness of a counterparty. The Sponsor will take various steps to limit counterparty credit risk, as described in the Registration Statement.

(7) The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares.

(8) The NAV per Share will be calculated daily and made available to all market participants at the same time.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.[40]

For the foregoing reasons, the Commission finds that the proposed rule change to amend Rule 14.11 and to list and trade the Shares pursuant to Rule 14.11, as proposed to be amended, is consistent with Sections 6(b)(5) of the Act[41] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[42] that the

40 The Commission notes that it does not regulate the market for futures in which the Fund plans to take positions, which is the responsibility of the Commodity Futures Trading Commission ("CFTC"). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

41 15 U.S.C. 78f(b)(5).

42 15 U.S.C. 78s(b)(2).

proposed rule change (SR-BATS-2012-044) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

Kevin M. O'Neill
Deputy Secretary

43 17 CFR 200.30-3(a)(12).