

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68257; File No. SR-BATS-2012-044)

November 19, 2012

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change to Amend BATS Rule 14.11, Entitled “Other Securities,” and to List and Trade Shares of Certain ProShares Products

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 5, 2012, BATS Exchange, Inc. (“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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 14.11, entitled “Other Securities,” to adopt new criteria for certain securities to be listed on the Exchange as Trust Issued Receipts (“TIRs”), as well as to list and trade shares of the following: ProShares Managed Futures Strategy; ProShares Commodity Managed Futures Strategy; and ProShares Financial Managed Futures Strategy. The Exchange has also proposed to correct a reference stating that TIRs will trade on the Exchange until 4:00 p.m. Eastern Time (“E.T.”) 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 has also proposed to make certain changes to conform to the listing rules of certain other exchanges and to make certain non-substantive changes and corrections to existing rule text.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the 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

The changes proposed in this filing will modify the Exchange's rules in order to allow listing of certain exchange traded products ("ETPs") by adopting criteria based on existing criteria applicable to ETPs listed on NYSE MKT LLC (formerly the American Stock Exchange or "AMEX") and NYSE Arca Equities, Inc. ("NYSE Arca"). Specifically, the Exchange proposes to modify Rule 14.11(f), which governs the listing of TIRs that are issued by a trust on the Exchange, in order to adopt new criteria for the listing of TIRs that invest in "Investment Shares" or "Financial Instruments," as proposed to be defined herein. The addition of subparagraph (4) to Rule 14.11(f) is based on Commentary .07 of AMEX Rule 1202 and Commentary .02 of NYSE Arca Rule 8.200 and is intended to accommodate possible 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 will be subject to the approval of a proposed rule change by the Commission pursuant to Section 19(b)(2) of the Act and Rule 19b-4 thereunder.

Capitalized terms that are otherwise undefined have the same meaning as those set forth under the Rules of the Exchange. The Exchange has also proposed to correct a reference stating that TIRs will trade on the Exchange until 4:00 p.m. E.T. 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 has also proposed to make certain changes to conform to the listing rules of certain other exchanges and to make certain non-substantive changes and corrections to existing rule text.

Pursuant to this proposed rule change, the Exchange also proposes to list and trade shares ("Shares") of the following: ProShares Managed Futures Strategy; ProShares Commodity Managed Futures Strategy; and ProShares Financial Managed Futures Strategy (each a "Fund," and together, "Funds").³ 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 ("Distributor").

The Exchange notes that the Commission has previously approved the listing and trading of shares of the Funds on NYSE Arca.⁴ In addition, the Commission has approved other

³ See the Trust's Registration Statement on Form S-1, dated November 29, 2011, as amended (File No. 333-178212 ("Registration Statement")). The description of the Funds and the Shares contained herein is based, in part, on the Registration Statement.

⁴ 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 Funds). Although the Funds were approved for listing and trading on NYSE Arca, the Funds' Shares have never been traded on any national securities exchange.

exchange-traded investment products linked to the performance of underlying commodities and currencies.⁵

Proposed Listing Rules

The Exchange proposes to adopt the following definitions for purposes of sub-paragraph (f)(4) of Rule 14.11:

- The term “Investment Shares” will mean a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.
- The term “futures contract” is commonly known as a “contract of sale of a commodity for future delivery” set forth in Section 2(a) of the Commodity Exchange Act.
- A “forward contract” is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forward contracts are traded over-the-counter (“OTC”) and not listed on a futures exchange.

⁵ See, e.g., Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR-NYSEArca-2007-91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR-NYSEArca-2009-40) (order granting accelerated approval for NYSE Arca listing the ETFs Gold Trust); 58365 (August 14, 2008), 73 FR 49522 (August 21, 2008) (order granting accelerated approval for NYSE Arca listing of four CurrencyShares Trusts); 63598 (December 22, 2010), 75 FR 82106 (December 29, 2010) (SR-NYSEArca-2010-98) (order approving listing and trading on the NYSE Arca of WisdomTree Managed Futures Strategy Fund).

- The term “Financial Instruments” will mean any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

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 of such 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.

- 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 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 the 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.⁶

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 applying the following requirements to the Trustee:

- The Trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as Trustee, a qualified trust company or banking institution must be appointed co-trustee.

⁶ 17 CFR 240.10A-3.

- No change is to be made in the Trustee of a listed issue without prior notice to and approval of the Exchange.

The Exchange is also proposing to add new sub-paragraph (f)(4)(C)(v), which states that voting rights shall be as set forth in the applicable trust prospectus.

In addition, the Exchange has proposed new sub-paragraph (D) to Rule 14.11(f)(4), 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 any Member acting as a registered Market Maker in TIRs must file, with the Exchange, in a manner prescribed by the 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 Member acting as registered Market Maker may have or over which it may exercise investment discretion. Rule 14.11(f)(4)(D)(i) will prohibit any Member acting as registered Market Maker in the Trust Issued Receipts 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 a Member acting as a 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.

Adoption of Rule 14.11(f)(4)(D)(ii) will also ensure that Market Makers handling shares of TIRs provide the Exchange with such books, records, or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

As a general matter, the Exchange has regulatory jurisdiction over its Members and their associated persons, which includes any person or entity controlling a Member, as well as a subsidiary or affiliate of a Member that is in the securities business. A subsidiary or affiliate of a Member that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

The Exchange has also proposed the adoption of Rule 14.11(f)(4)(E) related to limitation of liability. Specifically, neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses, or expenses caused by any errors, omissions, or delays in calculating or disseminating any applicable underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the trust in connection with issuance of TIRs, net asset value, or other information relating to the purchase, redemption, or trading of TIRs, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in an underlying asset or commodity.

The Exchange has also proposed the adoption of 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 adoption of new sub-paragraph (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, as described below.

First, the Exchange proposes to delete current sub-paragraph (f)(2)(B) of Rule 14.11, which sets forth criteria that are not included in the equivalent TIRs rules of AMEX (AMEX Rule 1202) and NYSE Arca (NYSE Arca Rule 8.200). Sub-paragraph (f)(2)(B) of Exchange Rule 14.11 governs eligibility of certain component securities that are issued by a company that has already been included as a component security in the applicable series of TIRs or has been received as part of a merger, consolidation, corporate combination, or other event. Rather than apply different criteria to such securities, the Exchange proposes to apply the criteria of sub-paragraph (f)(2)(G) of Rule 14.11 (to be re-numbered as (f)(3)) to all component securities of a TIR listed on the Exchange. Further, as noted above, this change will help to align the Exchange's rules applicable to TIRs with the rules of AMEX and NYSE Arca, which should help to alleviate confusion amongst issuers.

The Exchange also 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. The Exchange is proposing this change in order to align the Exchange's rules with NYSE Arca Rule 8.200.

Third, the Exchange proposes to eliminate the requirement in Rule 14.11(f)(2)(F) that transactions in Trust Issued Receipts 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 Trust Issued Receipts to round lots. Further, to the extent a specific Trust Issued Receipt should be limited to

trading in round lots, the Exchange has general authority pursuant to Exchange Rule 11.2 to limit transactions accordingly.⁷

The Exchange also proposes to:

- Capitalize “Trust” several times throughout Rule 14.11(f) in order to make clear which references to Trust are a reference to the term defined in Rule 14.11(f)(1);
- Add a defined term “Trustee” to Rule 14.11(f)(1) and to capitalize the term Trustee throughout Rule 14.11(f) in order to make clear which references to Trustee are intended to refer to the defined term in Rule 14.11(f)(1);
- Add titles to Rules 14.11(f)(2)(C) and (D) in order to make the rules more clear;
- Remove the words “a Trust upon which” and “is based” from Rule 14.11(f)(2)(D)(ii) in order to clarify that the Exchange will consider the suspension of trading in or removal from listing of a series of TIRs rather than the Trust upon which a series of TIRs is based;
- Remove the words “following requirements apply: (a) the” from Rule 14.11(f)(2)(D)(iv) because they would be unnecessary as a result of the proposed deletion of subparagraph (b) from this section; and
- Add the word “additional” to Rule 14.11(f)(3) to clarify that the Exchange may approve a series of TIRs for listing and trading pursuant to Rule 19b-4(e) under the Act, provided that such TIRs satisfy the requirements in Rules 14.11(f)(1) and (2), as

⁷ 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.”

proposed to be amended, in addition to the requirements under subparagraph (f)(3) relating to component securities underlying such TIRs.

Trading Rules

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 has 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 \$0.0001.⁸

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 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 Intraday Indicative Value, 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 Intraday

⁸ See Rule 11.11(a).

Indicative Value, 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 will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to 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.

Surveillance

The Exchange believes 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.⁹ The Exchange 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 will remind its Members of the suitability requirements of BATS Rule 3.7 in an Information Circular. Specifically, Rule 3.7 provides that, in recommending transactions in these securities, a Member must have reasonable grounds for believing that (1) 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 (2)

⁹ For a list of the current members and affiliate members of ISG, see www.isgportal.com.

the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the securities. In connection with the suitability obligation, the Information Circular will also provide that Members must make reasonable efforts to obtain the following information: (1) the customer's other securities holdings; (2) the customer's financial situation and needs; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such Member or registered representative in making recommendations to the customer.

In addition, 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"). 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

According to the Registration Statement, 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 the NYSE Arca.¹⁰ 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, the following changes in administering the Index have occurred:

- rebalancing and positioning now occur on a component by component basis, rather than by sector;

¹⁰ 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 Funds).

- energy components can now be held in long or short positions, rather than just long or flat (as further described herein);¹¹ and
- 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 changes, 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 attempt to capture the economic benefit derived from both rising and declining trends in futures prices.¹² 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").¹³ Commodity Futures Contracts and Financial Futures Contracts each comprise a Sub-Index of the Index: the DCFI and the DFFI, respectively (together, "Sub-Indexes").

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 rule was the heightened potential for significant losses in the event of a supply disruption of

¹¹ As previously approved, all sectors other than energy could go long and short.

¹² 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.

¹³ 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").

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”);¹⁴ 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.¹⁵ 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

¹⁴ 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.

¹⁵ Terms relating to the Funds and the Shares that are referred to, but not defined herein, are defined in the Registration Statement.

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

According to the Registration Statement, each Fund will seek to achieve its investment objective by investing, under normal market circumstances,¹⁶ 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.¹⁷ 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.¹⁸

¹⁶ 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.

¹⁷ To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house.

¹⁸ According to the Registration Statement, 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

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.¹⁹

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”).

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.

The following charts reflect the initial 2012 weighting schemes for the Index and each Sub-Index. For the Index, the initial Index weights, together with information about the exchange and trading hours for each Futures Contract, are as follows:

Index Weights		
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take various steps to limit counterparty credit risk, as described in the Registration Statement.

¹⁹ 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.

Sub-Index	Weight	Sector	Weight	Component	Weight	Exchange	Trading Hours²⁰
DCFI	50%	Energy	15.06%	Light Crude	10.93%	NYMEX (CME)	6:00 p.m.-5:15 p.m. next day
				Heating Oil	1.79%	NYMEX (CME)	6:00 p.m.-5:15 p.m. next day
				RBOB Gasoline	1.74%	NYMEX (CME)	6:00 p.m.-5:15 p.m. next day
				Natural Gas	0.59%	NYMEX (CME)	6:00 p.m.-5:15 p.m. next day
		Industrial Metals	4.67%	Copper	4.67%	COMEX (CME)	6:00 p.m.-5:15 p.m. next day
		Precious Metals	5.09%	Gold	4.36%	COMEX (CME)	6:00 p.m.-5:15 p.m. next day
				Silver	0.72%	COMEX (CME)	6:00 p.m.-5:15 p.m. next day
		Livestock	6.02%	Lean Hogs	2.12%	CME	** ²¹
				Live Cattle	3.90%	CME	** ²²

²⁰ All times are E.T., inclusive of electronic and open outcry trading sessions, as applicable.

²¹ Lean Hogs trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5:00 p.m. to 6:00 p.m.

²² Live Cattle trade from 10:05 a.m. Monday to 2:55 p.m. Friday, with daily trading halts from 5:00 p.m. to 6:00 p.m.

Index Weights							
Sub-Index	Weight	Sector	Weight	Component	Weight	Exchange	Trading Hours²⁰
		Grains	13.33%	Corn	6.20%	CBOT (CME)	6:00 p.m. – 3:00 p.m. next day
				Soybeans	3.16%	CBOT (CME)	6:00 p.m. – 3:00 p.m. next day
				Wheat	3.97%	CBOT (CME)	6:00 p.m. – 3:00 p.m. next day
		Softs	5.83%	Coffee	1.23%	ICE	3:30 am-2:00 p.m.
				Cocoa	0.31%	ICE	4:00 am-2:00 p.m.
				Sugar	2.67%	ICE	2:30 am-2:00 p.m.
				Cotton	1.63%	ICE	9:00 p.m.-2:30 p.m. next day
DFFI	50%	Australian Dollar	1.61%	Australian Dollar		CME	6:00 p.m.-5:15 p.m. next day
		British Pound	3.01%	British Pound		CME	6:00 p.m.-5:15 p.m. next day
		Canadian	2.05%	Canadian		CME	6:00 p.m.-5:15

Index Weights							
Sub-Index	Weight	Sector	Weight	Component	Weight	Exchange	Trading Hours²⁰
		Dollar		Dollar			p.m. Next day
		Euro	16.49%	Euro		CME	6:00 p.m.-5:15 p.m. Next day
		Japanese Yen	7.09%	Japanese Yen		CME	6:00 p.m.-5:15 p.m. Next day
		Swiss Franc	0.66%	Swiss Franc		CME	6:00 p.m.-5:15 p.m. Next day
		U.S. Treasury Notes ²³	9.54%	U.S. Treasury Notes		CBOT (CME)	6:00 p.m.-5:00 p.m. Next day
		U.S. Treasury Bonds ²⁴	9.54%	U.S. Treasury Bonds		CBOT (CME)	6:00 p.m.-5:00 p.m. Next day
Totals	100%		100%		100%		

For the DCFI, the initial Sub-Index weightings would be as follows:

DCFI Weights			
Sector	Weight	Component	Weight
Energy	30.12%	Light Crude	21.86%

²³ “U.S. Treasury Notes” refer to 10 year U.S. Treasury Note futures.

²⁴ “U.S. Treasury Bonds” refer to those futures with underlying bonds of a remaining term to call or maturity of 15-25 years.

DCFI Weights			
Sector	Weight	Component	Weight
		Heating Oil	3.58%
		RBOB Gasoline	3.49%
		Natural Gas	1.19%
Industrial Metals	9.34%	Copper	9.34%
Precious Metals	10.18%	Gold	8.73%
		Silver	1.45%
Livestock	12.04%	Lean Hogs	4.24%
		Live Cattle	7.80%
Grains	26.67%	Corn	12.41%
		Soybeans	6.31%
		Wheat	7.95%
Softs	11.67%	Coffee	2.45%
		Cocoa	0.62%
		Sugar	5.34%
		Cotton	3.26%
Total	100%		100%

Finally, for the DFFI, the initial Sub-Index weightings would be as follows:

DFFI Weights			
Sector	Weight	Component	Weight
Australian Dollar	3.23%	Australian Dollar	3.23%

DFFI Weights			
Sector	Weight	Component	Weight
British Pound	6.02%	British Pound	6.02%
Canadian Dollar	4.10%	Canadian Dollar	4.10%
Euro	32.99%	Euro	32.99%
Japanese Yen	14.17%	Japanese Yen	14.17%
Swiss Franc	1.33%	Swiss Franc	1.33%
U.S. Treasury Notes	19.08%	U.S. Treasury Notes	19.08%
U.S. Treasury Bonds	19.08%	U.S. Treasury Bonds	19.08%
Total	100%		100%

Index Components are rebalanced each month to their annually determined weights.

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:

- 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; and
- 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. The weighted sum of the percentage changes of all the Index Component prices equals the daily movement of the Index.

To create an exponential average for comparison, price inputs (percentage change from current and previous PDDs) are weighted per the schedule below. Due to this weighting methodology, current price movements are more important than those of the more distant past.

Number of Months	Weight
7	2.32%
6	3.71%
5	5.94%
4	9.51%
3	15.22%
2	24.34%
1	38.95%
TOTAL	100.00%

All the Index Components will be set long or short upon each monthly rebalancing.

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.²⁵

Net Asset Value

The NAV in respect of each Fund means the total assets of such Fund including, but not limited to, all cash and cash equivalents or other debt securities less total liabilities of such Fund, each determined on the basis of generally accepted accounting principles in the United States, consistently applied under the accrual method of accounting. In particular, NAV will include any unrealized profit or loss on open Futures Contracts and other holdings, if any, and any other credit or debit accruing to a Fund but unpaid or not received by such Fund. The NAV per Share of each Fund will be computed by dividing the value of the net assets of such Fund (i.e., the value of its total assets less total liabilities) by its total number of Shares outstanding. Expenses and fees will be accrued daily and taken into account for purposes of determining NAV. 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.

In calculating the NAV of each Fund, all open Futures Contracts will be calculated at their then current market value, as described in the Registration Statement. The current market value of all open Futures Contracts, to the extent applicable, will be based upon the settlement

²⁵ 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.

price for that particular Futures Contract on the date with respect to which NAV is being determined, as described in the Registration Statement.

The settlement value of a Fund's swap agreements, as applicable, will be determined by applying the then-current disseminated value for the applicable Index Components to the terms of the Funds' swap agreements.

In the event that an underlying Index Component is not trading due to the operation of daily limits or otherwise, the Sponsor may in its sole discretion choose to fair value the applicable Index or Sub-Index level in order to value a Fund's futures contracts and, if applicable, swap agreements for purposes of NAV calculation.

The Exchange will obtain a representation (prior to listing 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.

Intraday Indicative Value

An estimated value, defined in BATS Rule 14.11(i)(3)(C) as the "Intraday Indicative Value" or "IIV" that reflects a current estimated intraday value of Futures Contracts and other applicable holdings, cash and receivables, less liabilities of each Fund, will be disseminated.

For each Fund, the IIV will be widely disseminated on a per Share basis by one or more major market data vendors every 15 seconds during "Regular Trading Hours" (9:30 a.m. to 4:00 p.m. E.T.).²⁶ The value of a Share may be influenced by non-concurrent trading hours between the Exchange and the applicable Futures Exchanges trading Futures Contracts when the Shares are traded on the Exchange after normal trading hours of such Futures Exchanges. The IIV will

²⁶ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published on CTA or other data feeds.

be updated during Regular Trading Hours when applicable Futures Exchanges are trading any Futures Contracts 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.²⁷ 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 updating throughout the trading day changes in the value of each Fund's Futures Contracts, cash equivalents, swap agreements, if applicable, and other applicable holdings. 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. The IIV also should not be viewed as a precise value of the Shares.

According to the Registration Statement, dissemination of the IIV provides additional information that is not otherwise available to the public in such form and may be useful to investors and market professionals in connection with the trading of Shares.

Creation and Redemption of Shares

According to the Registration Statement, each Fund will create and redeem Shares from time to time, but only in one or more Creation Units. A Creation Unit is a block of 50,000 Shares. Creation Units may be created or redeemed only by authorized participants, as described in the Registration Statement. Except when aggregated in Creation Units, the Shares will not be redeemable securities. The Sponsor will make available on a daily basis the total cash payment required to create each Creation Unit of a Fund on the purchase order date in connection with the issuance of the respective Shares. Authorized participants may pay a fixed and/or variable

²⁷ 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.

transaction fee in connection with each order to create or redeem a Creation Unit. Authorized participants may sell the Shares included in the Creation Units they purchase from the Funds to other investors. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to create one or more Creation Units. The total payment required to create each Creation Unit will be equal to the NAV of 50,000 Shares of the applicable Fund on the purchase order date plus the applicable transaction fee.

According to the Registration Statement, the procedures by which an authorized participant can redeem one or more Creation Units will mirror the procedures for the creation of Creation Units. On any business day, an authorized participant may place an order prior to 10:45 a.m. E.T. with the Distributor to redeem one or more Creation Units. Individual shareholders may not redeem directly from a Fund.

By placing a redemption order, an authorized participant agrees to deliver the Creation Units to be redeemed through the Depository Trust Company's book-entry system to a Fund not later than noon E.T., on the first business day immediately following the redemption order date (T+1). The Sponsor reserves the right to extend the deadline for the Fund to receive the Creation Units up to the third business day following the redemption order date (T+3). The redemption proceeds from a Fund will consist of the cash redemption amount. The cash redemption amount is an amount equal to the NAV of the number of Creation Unit(s) of a Fund requested in the authorized participant's redemption order as of the time of the calculation of the Fund's NAV on the redemption order date, less transaction fees, as described in the Registration Statement.

Availability of Information Regarding the Shares

The website for the Funds (www.ProShares.com) and/or the Exchange, which are publicly accessible at no charge, will contain the following information: (a) the current NAV per

Share daily and the prior business day's NAV per Share; (b) calculation of the premium or discount between the NAV per Share and the price or mid-point of the Bid/Ask Price of the Funds as of the time the NAV is calculated or as of the official market close; (c) the prospectus; and (d) other applicable quantitative information.

The Exchange also will disseminate on a daily basis via the Consolidated Tape Association ("CTA") information with respect to the recent NAV and Shares outstanding. The Exchange will also make available on its website (www.batstrading.com) 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 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. The intra-day, closing, and settlement prices of the Futures Contracts are also readily available, as applicable, from the respective Futures Exchanges. Quotation and last-sale information for the Shares will be available via the CTA high-speed line.

Portfolio Disclosure

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. Therefore, the

same portfolio information will be provided on the public website as well as in electronic files provided to authorized participants. Accordingly, each investor will have access to the current portfolio composition of the Funds through the Funds' website, and/or at the Exchange's website.

Availability of Information about the Index and Sub-Indexes

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.

Criteria for Initial and Continued Listing

The Funds will be subject to the criteria proposed above in BATS Rule 14.11(f)(4) for initial and continued listing of the Shares.

The anticipated minimum number of Shares for each Fund to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this anticipated minimum number of Shares for each Fund to be outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the objectives of each Fund. The Exchange represents that, for

the initial and continued listing of the Shares, the Funds must be in compliance with Rule 14.11(f)(4) as well as Rule 10A-3 under the Act.

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. 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 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. If any of the Intraday Indicative Value, 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 Intraday Indicative Value, 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. In addition, if the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, it will halt trading until such time as the NAV is available to all market participants.

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 during Regular Trading Hours, as well as during the Pre-Opening

Session²⁸ and the After Hours Trading Session.²⁹ 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 TIRs traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00 for which the minimum price variation for order entry is \$0.0001. Trading of the Shares will also be subject to proposed BATS Rule 14.11(f)(4)(D), which sets forth certain restrictions on Members acting as market makers.

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 TIRs. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are currently members of ISG.³⁰ 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. Finally, all Futures Contracts will be traded on a trading market that is a member of ISG or is a market with

²⁸ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. E.T.

²⁹ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. E.T.

³⁰ The Exchange notes that certain components of the portfolio for the Funds may not trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

which the Exchange has a comprehensive surveillance sharing agreement. The Exchange also 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 is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (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 the Funds. Members purchasing Shares from the Funds 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 the Funds are subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares 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' website.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.³¹ Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,³² because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange believes that the proposed rules will facilitate the listing and trading of additional types of exchange-traded products on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the listing and trading criteria set forth in the proposed rules are intended to protect investors and the public interest.

The Exchange's listing requirements as proposed herein are at least as stringent as those of AMEX and NYSE Arca and, consequently, the proposed rule change is consistent with the protection of investors and the public interest. Additionally, the proposal is designed to prevent fraudulent and manipulative acts and practices, as all of the proposed new products are subject to existing Exchange trading rules, together with specific requirements for registered market

³¹ 15 U.S.C. 78f(b).

³² 15 U.S.C. 78f(b)(5).

makers, books and record production, surveillance procedures, suitability and prospectus requirements, and requisite Exchange approvals, all set forth above.

The proposal is also designed to promote just and equitable principles of trade by way of initial and continued listing standards which, if not maintained, will result in the discontinuation of trading in the affected products. These requirements, together with the applicable Exchange equity trading rules (which will apply to products listed under the proposed criteria), ensure that no investor would have an unfair advantage over another respecting the trading of the subject products. On the contrary, all investors will have the same access to, and use of, information concerning the specific products and trading in the specific products, all to the benefit of public customers and the marketplace as a whole.

Furthermore, the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting listing standards that will lead ultimately to the trading of the proposed new products on the Exchange, just as they are currently traded on other exchanges. The Exchange believes that individuals and entities permitted to make markets on the Exchange in the proposed new products should enhance competition within the mechanism of a free and open market and a national market system, and customers and other investors in the national market system should benefit from more depth and liquidity in the market for the proposed new products.

As it relates to the Funds, 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 proposed in Rule 14.11(f)(4). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of

Exchange rules and applicable federal securities laws. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the Futures Exchanges, all of which are currently members of ISG, as noted above. 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. The Futures Contracts are traded on the Futures Exchanges, each of which is an ISG member, and information regarding trading in the Index Components is available from the websites of the respective Futures Exchanges and from major market data vendors. 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. Standard & Poor's has implemented procedures designed to prevent the use and dissemination of material, non-public information regarding the Index and Sub-Indexes. Data regarding the commodities, currencies, and Treasury securities underlying the Index Components is publicly available from various financial information service providers. The Exchange may halt trading during the day in which an interruption to the dissemination of the IIV, the level of the Index (or Sub-Index) or the value of the underlying Futures Contracts occurs. If an interruption to the dissemination of the IIV, the level of the Index (or Sub-Index), or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. As mentioned above, energy components are now set long or short because: (i) potential losses are mitigated

by the limited weight attributable to any single energy component; and (ii) 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.

The proposed rule change is also 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 per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. On each business day, before commencement of trading in Shares on the Exchange, the Funds will disclose the identities and quantities of the futures contracts and other assets held by the Funds that will form the basis for the calculation of NAV at the end of the business day. 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. Pricing information will be available on the Trust's website including: (1) the current NAV per Share daily and the prior business day's NAV per Share; (2) calculation of the premium or discount between the NAV per Share and the price or mid-point of the Bid/Ask Price of the Funds as of the time the NAV is calculated or as of the official market close; (3) the prospectus; and (4) other applicable quantitative information. Additionally, information regarding market price and trading of the Shares is and 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 relevant Exchange data feeds, which contain information for widely followed indexes and securities traded on the Exchange. The website for the Funds will include a form of the prospectus for the Funds and additional data

relating to NAV and other applicable quantitative information. Trading in the Shares 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. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, and quotation and last-sale information for the Shares.

On the whole, 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 an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. 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.

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 imposes any burden on competition.

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 Changes 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2012-044 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-BATS-2012-044. 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 Section, 100 F Street, NE, Washington, DC 20549, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the 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 Number SR-BATS-2012-044 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Kevin M. O'Neill
Deputy Secretary

³³ 17 CFR 200.30-3(a)(12).