4. Applicants also assert that the Substitutions do not entail any of the abuses that Section 26(c) was designed to prevent. Each Affected Contract Owner has been advised of his right, any time prior to the Substitution Date, and for at least 30 days after the Substitution Date, to reallocate account value under the affected Contract without any cost or limitation, or otherwise withdraw or terminate his interest in accordance with the terms and conditions of his Contract. Furthermore, Contract Owners will not incur any additional tax liability or any additional fees or expenses as a result of the Substitutions.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Substitutions will not be effected unless the Applicants determine that: (a) The Contracts allow the substitution of shares of registered open-end investment companies in the manner contemplated by the application; (b) the Substitutions can be consummated as described in the application under applicable insurance laws; and (c) any regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the proposed Substitutions.

2. Applicants or their affiliates will pay all expenses and transaction costs of the proposed Substitutions, including legal and accounting expenses, any applicable brokerage expenses and other fees and expenses. No fees or charges will be assessed to the Affected Contract Owners to effect the proposed Substitutions.

3. The Substitutions will be effected at the relative net asset values of the respective shares in conformity with Section 22(c) of the Act and Rule 22c–1 thereunder without the imposition of any transfer or similar charges by Applicants. The Substitutions will be effected without change in the amount or value of any Contracts held by Affected Contract Owners.

4. The Substitutions will in no way alter the tax treatment of Affected Contract Owners in connection with their Contracts, and no tax liability will arise for Affected Contract Owners as a result of the proposed Substitutions.

5. The rights or obligations of the PLIC under the Contracts of Affected Contract Owners will not be altered in any way. The Substitutions will not adversely affect any riders under the Contracts.

6. Affected Contract Owners will be permitted to make at least one transfer of Contract value from the subaccount investing in the Existing Fund (before the Substitution Date) or the Replacement Fund (after the Substitution Date) to any other available investment option under the Contract without charge for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date. Except as described in any market timing/short-term trading provisions of the relevant prospectus, PLIC will not exercise any right they may have under the Contracts to impose restrictions on transfers between the subaccounts under the Contracts, including limitations on the future number of transfers, for a period beginning at least 30 days before the Substitution Date through at least 30 days following the Substitution Date.

7. All Affected Contract Owners will be notified, at least 30 days before the Substitution Date about: (a) The intended substitution of the Existing Fund with the Replacement Fund; (b) the intended Substitution Date; and (c) information with respect to transfers as set forth in Condition 6 above. In addition, the Applicants will deliver to all Affected Contract Owners, at least 30 days before the Substitution Date, a prospectus for the Replacement Fund.

8. Applicants will deliver to each Affected Contract Owner within five (5) business days of the Substitution Date a written confirmation which will include: (a) A confirmation that the proposed Substitutions were carried out as previously notified; (b) a restatement of the information set forth in the Pre-Substitution Notice; and (c) before and after account values.

9. Applicants will not receive, for three years from the Substitution Date, any direct or indirect benefits from the Replacement Fund, its adviser or underwriter (or their affiliates), in connection with assets attributable to Contracts affected by the Substitutions, at a higher rate than they had received from the Existing Fund, its adviser or underwriter (or their affiliates), including without limitation 12b–1 fees, shareholder service, administrative or other service fees, revenue sharing, or other arrangements.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77379; File No. SR–BATS–2016–16]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Pointbreak Diversified Commodity Fund of the Pointbreak ETF Trust Under BATS Rule 14.11(i), Managed Fund Shares

March 16, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2016, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to list and trade shares of the Pointbreak Diversified Commodity Fund (the ''Fund'') of the Pointbreak ETF Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the Fund are referred to herein as the ''Shares''.

The text of the proposed rule change is available at the Exchange's Web site at *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.

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

[2] 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[3] The Fund will be an actively managed fund that seeks to provide long term capital appreciation, primarily through exposure to the commodity futures markets.

The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on June 18, 2015. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (''Registration Statement'') with the Commission.[4] The Commodity Futures Trading Commission (''CFTC'') has recently adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions and conditions for reliance on exemptions from registration as a commodity pool operator. As a result of the instruments that will be held by the Fund, prior to listing on the Exchange, the Adviser will be registered as a Commodity Pool Operator (''CPO'') and will become a member of the National Futures Association (''NFA''). The Fund and a wholly-owned subsidiary of the Fund organized under the laws of the Cayman Islands (the ''Subsidiary'') will be subject to regulation by the CFTC and NFA and additional disclosure, reporting and recordkeeping rules imposed upon commodity pools. The Fund will generally obtain its exposure to commodity markets via investments in the Subsidiary. These investments are intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. Henceforth, references to the investments of the Fund include investments of the Subsidiary to which the Fund gains indirect exposure through investment in the Subsidiary.

Description of the Shares and the Fund

Pointbreak Advisers LLC is the investment adviser (''Adviser'') to the Fund. Brown Brothers Harriman & Co. (''BBH'') is the administrator, custodian and transfer agent for the Trust. ALPS Distributors, Inc. (''Distributor'') serves as the distributor for the Trust. The Adviser is not affiliated with either BBH or the Distributor.

BATS Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[5] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to BATS Rule 14.11(b)(5)(A)(i), however, Rule 14.11(i)(7) in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. The Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Pointbreak Diversified Commodity Fund

According to the Registration Statement, the Fund is an actively managed exchange-traded fund (''ETF'') that seeks to provide total return that exceeds that of a benchmark, the Solactive Diversified Commodity Index (the ''Benchmark'') over time. The Fund is not an index tracking exchange-traded fund and is not required to invest in the specific components of the Benchmark. However, the Fund will generally seek to maintain a portfolio of instruments similar to those included in the Benchmark and will seek exposure to commodities included in the Benchmark. The Benchmark is a rules-based index composed of futures contracts on 16 heavily traded commodities across the energy, precious metals, industrial metals and agriculture sectors: Aluminum, Brent crude oil, cocoa, copper, corn, gold, heating oil, live cattle, natural gas, Reformulated Gasoline Blendstock for Oxygen Blending (''RBOB'') gasoline, silver, soybeans, sugar #11, wheat, WTI light crude oil, and zinc. The allocation among the Fund's investments generally approximates the allocation among the components of the Benchmark. The Benchmark will further seek to select the contract month, for each specific commodity, among the next 13 months that display the most backwardation, or the least contango, and does not attempt to always own those contracts that are closest to expiration. Although the Fund seeks returns comparable to the returns of the Benchmark, the Fund can have a higher or lower exposure to any component within the Benchmark at any time and may invest in other commodity-linked instruments as well, as described below.

Principal Holdings

According to the Registration Statement, under normal

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

[4] *See* Registration Statement on Form N–1A for the Trust, dated December 4, 2015 [sic] (File Nos. 333–205324 and 811–23068). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 30562 (June 18, 2013) (File No. 812–14041) [sic].

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

circumstances,[6] the Fund will invest, either directly or through the Subsidiary, in a combination of Commodity Futures, as defined below, and cash and cash-like instruments (''Cash Instruments''). Commodity Futures include only the following instruments: Exchange-traded futures on commodities; and exchange-traded futures contracts on commodity indices. These instruments provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities.

Under normal circumstances, in addition to investing in Commodity Futures through the Subsidiary, the Fund will invest its remaining assets in Cash Instruments, including cash, cash-like instruments or high-quality collateral securities that provide liquidity, serve as margin, or collateralize the Subsidiary's investments in Commodity Futures. Such Cash Instruments include only the following instruments: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments; (iii) money market mutual funds, including affiliated money market mutual funds; and (iv) repurchase agreements.[7] The Fund will not invest in Cash Instruments that are below investment grade.

The Fund generally will not invest directly in Commodity Futures. The Fund expects to gain exposure to Commodity Futures by investing a portion of its assets in the Subsidiary, which will invest in Commodity Futures.[8] The Subsidiary is also advised by the Adviser. Unlike the Fund, the Subsidiary is not an investment company registered under the 1940 Act. The Fund's investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. The Subsidiary has the same investment objective and investment restrictions as the Fund. The Fund will generally invest up to 25% of its total assets in the Subsidiary.

During times of adverse market, economic, political or other conditions, the Fund may depart temporarily from its principal investment strategies (such as by maintaining a significant uninvested cash position) for defensive purposes. Doing so could help the Fund avoid losses, but may mean lost investment opportunities. During these periods, the Fund may not achieve its investment objective.

The Fund intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[9] The Fund will invest its assets (including via the Subsidiary), and otherwise conduct its operations, in a manner that is intended to satisfy the qualifying income, diversification and distribution requirements necessary to establish and maintain RIC qualification under Subchapter M.

Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser[10] under the 1940 Act.[11] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance. Aside from the Fund's investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities or options.

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

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Shares of the Fund will be calculated by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding. Expenses and fees, including the management and administration fees, are accrued daily and taken into account for purposes of determining NAV. The NAV of the Fund is generally determined at 4:00 p.m. Eastern Time each business day when the Exchange is open for trading. If the Exchange or market on which the Fund's investments are primarily traded closes early, the NAV may be calculated prior to its normal calculation time. Creation/redemption transaction order time cutoffs (as further described below) would also be accelerated.

Securities and other assets held by both the Fund and the Subsidiary are generally valued at their market price using market quotations or information provided by a pricing service. Certain short-term debt securities are valued on the basis of amortized cost. Commodity

[6] The term ''under normal 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.

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

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

[9] 26 U.S.C. 851.

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

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

Futures are generally valued at their settlement price as determined by the relevant exchange. Repurchase agreements will generally be valued at bid prices received from independent pricing services as of the announced closing time for trading in such instruments. Cash and cash equivalents (other than money market mutual funds) also may be valued on the basis of information furnished by an independent pricing service that uses a valuation matrix which incorporates both dealer-supplied valuations and electronic data processing techniques. Short-term debt securities with remaining maturities of sixty days or less for which market quotations and information furnished by an independent pricing service are not readily available will be valued at amortized cost. Shares of money market mutual funds will be valued at their current Net Asset Value per share.

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

The Shares

The Fund will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of 50,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of the Fund may trade on the secondary market in amounts less than a Creation Unit.

Although the Adviser anticipates that purchases and redemptions for Creation Units will generally be executed on an all-cash basis, the consideration for purchase of Creation Units of the Fund may consist of an in-kind deposit of a designated portfolio of assets (including any portion of such assets for which cash may be substituted) (*i.e.,* the ''Deposit Assets''), and the ''Cash Component'' computed as described below. Together, the Deposit Assets and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Fund. The specific terms surrounding the creation and redemption of shares are at the discretion of the Adviser.

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

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

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

The Fund reserves the right to permit or require the substitution of a ''cash in lieu'' amount to be added to the Cash Component to replace any Deposit Asset that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the Depository Trust Company (''DTC'') or the clearing process through the NSCC.[12]

Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor at a time specified by the Adviser. The Fund currently intends that such orders must be received in proper form no later than 10:30 a.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The ''Settlement Date'' is generally the third business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

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

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

A standard redemption transaction fee, in an amount disclosed in the current prospectus for the Fund, may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

Redemption requests for Creation Units of the Fund must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. The Fund currently intends that such requests must be received no later than 10:30 a.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

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

Availability of Information

The Fund's Web site, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Web site will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior

[12] The Adviser represents that, to the extent the Trust permits or requires a ''cash in lieu'' amount, such transactions will be effected in the same or equitable manner for all authorized participants.

business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[13] daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing market price or Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours [14] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio Commodity Futures and other assets (the ''Disclosed Portfolio'') held by the Fund and the Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[15] The Disclosed Portfolio will include, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio. The Web site and information will be publicly available at no charge.

In addition, for the Fund, an estimated value, defined in BATS Rule 14.11(i)(3)(C) as the ''Intraday Indicative Value,'' that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[16] In addition, the quotations of certain of the Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours.

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

Intraday price quotations on U.S. government securities, debt securities, and repurchase agreements of the type held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For futures, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Quotation and last sale information for the Shares will be available on the facilities of the CTA.

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[17] A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

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

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 14.11(i)(2)(C), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The Exchange may obtain information regarding trading in the Shares and the underlying futures, including futures contracts held by the Subsidiary, 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

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

[14] Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[15] Under accounting procedures to be followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[16] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Intraday Indicative Values published via the Consolidated Tape Association (''CTA'') or other data feeds.

[17] *See* 17 CFR 240.10A–3.

surveillance sharing agreement.[18] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine (''TRACE''). The Exchange prohibits the distribution of material non-public information by its employees.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and Disclosed Portfolio are disseminated; (4) the risks involved in trading the Shares during the Pre-Opening [19] and After Hours Trading Sessions [20] 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 Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

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

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act [21] in general and section 6(b)(5) of the Act [22] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in BATS Rule 14.11(i). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. If the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser to the investment company shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. The Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. The Exchange may obtain information regarding trading in the Shares and the underlying futures, including those held by the Subsidiary, via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[23] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

Under normal circumstances, the Fund will invest, either directly or through the Subsidiary, in a combination of Commodity Futures and Cash Instruments. Commodity Futures provide exposure to the investment returns of the commodities markets, without investing directly in physical commodities. The Fund generally will not invest directly in Commodity Futures. The Fund expects to gain exposure to these investments by investing a portion of its assets in the Subsidiary. Cash Instruments include only the following instruments: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments; and (iii) money market mutual funds, including affiliated money market mutual funds. The Fund will not invest in Cash Instruments that are below investment grade.

During times of adverse market, economic, political or other conditions, the Fund may depart temporarily from its principal investment strategies (such as by maintaining a significant uninvested cash position) for defensive purposes. Doing so could help the Fund avoid losses, but may mean lost investment opportunities. During these periods, the Fund may not achieve its investment objective.

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

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the

[18] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange also notes that all of the futures contracts in the Disclosed Portfolio for the Fund will trade on markets that are a member of ISG or affiliate or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[19] The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

[20] The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

[21] 15 U.S.C. 78f.

[22] 15 U.S.C. 78f(b)(5).

[23] *See* note 21, supra.

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

Intraday price quotations on U.S. government securities, debt securities, and repurchase agreements of the type held by the Fund are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For futures, such intraday information is available directly from the applicable listing exchange. Intraday price information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

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

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

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

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

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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 email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2016–16 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–BATS–2016–16. This file number should be included on the subject line if email 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 Web site (*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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2016–16 and should be submitted on or before April 12, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–06339 Filed 3–21–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77381; File No. SR–NASDAQ–2016–033]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Offer Remote ITCH to Trade Options Wave Ports

March 16, 2016.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 2, 2016, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to establish a fee for a new optional wireless connectivity service, Remote ITCH to Trade Options Wave Ports.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.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 aspects of such statements.

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

1. Purpose

Nasdaq is proposing to amend Nasdaq Options Market (''NOM'') Rules chapter XV, section 3, to establish fees for Remote ITCH to Trade Options (''ITTO'') Wave Ports for clients co-located at other third-party data centers located in Mahwah, N.J. (''Mahwah'') and Secaucus, N.J. (''Secaucus''), through which Nasdaq ITTO market data will be distributed after delivery to those data centers via a wireless network. Nasdaq ITTO is a data feed that provides quotation information for individual orders on the NOM book, last sale information for trades executed on NOM, and Order Imbalance Information as set forth in NOM Rules chapter VI, section 8.[3] Nasdaq ITTO market data is subscribed to under NOM Rules chapter XV, section 4.

Nasdaq provides market data via two connectivity mediums: Fiber optic networks, and/or wireless networks, (aka, Remote Wave Ports). ITTO market data is currently provided only by Nasdaq through fiber optic networks. Nasdaq is now proposing to provide ITTO market data through Remote Wave Ports. A Remote Wave Port is a physical port located in Nasdaq's space within a third-party's (remote) data center that receives market data delivered by Nasdaq via a wireless network,[4] which is then simultaneously distributed to Wave Ports within that location. Clients must separately subscribe to the data received by the Remote Wave Port service.

Nasdaq offers TotalView ITCH equities market data through Remote MITCH Wave Ports for clients co-located at third-party data centers in Mahwah and Secaucus.[5] Nasdaq has recently increased the capacity of its wireless networks connecting Nasdaq's Carteret data center to those third-party data centers, so that they may now support delivery of ITTO market data.

Nasdaq is proposing to deliver ITTO market data to Nasdaq-owned cabinets at the third-party data centers located in Mahwah and Secaucus via a wireless network, as is currently done for TotalView ITCH market data. This offering, which is entirely optional, will enable delivery of Nasdaq ITTO market data to the third-party data centers at the same low latency.[6] Clients will have the option of cross-connecting to their subscribed ITTO Wave Ports in those data centers to receive the ITTO data feed.

Nasdaq is proposing to assess an installation charge for a Remote Wave Port in Mahwah of $5,000 and a charge of $2,500 for a Remote Wave Port in Secaucus. Nasdaq is also proposing a monthly recurring fee of $10,000 for a Remote Wave Port in Mahwah and $7,500 for a Remote Wave Port in Secaucus. Clients opting to subscribe to a Remote ITTO Wave Port will continue to be fee liable for the applicable market data fees as described in NOM Rules chapter XV, section 4(a).

Competition for market data distribution is considerable and the Exchange believes that this proposal clearly evidences such competition. Nasdaq is offering a new data delivery option via Remote Wave Ports to keep pace with changes in the industry and evolving customer needs as new technologies emerge and products continue to develop and change. The new delivery option is similar to existing offerings, entirely optional, and is geared towards attracting new customers, as well as retaining existing customers.

The proposed fees are based on the cost to Nasdaq and its vendors of installing and maintaining the wireless connectivity and on the value provided to the customer, which receives low latency delivery of data feeds. The costs associated with the wireless connectivity system are incrementally higher than fiber optics-based solutions due to the expense of the wireless equipment, cost of installation, and

[24] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

[3] *See* Nasdaq Options Rules chapter VI, section 1(a)(3)(A).

[4] Wireless technology has been in existence for many years, used primarily by the defense, retail, and telecommunications industries. Wireless connectivity involves the beaming of signals through the air between towers that are within sight of one another. Because the signals travel a straight, unimpeded line, and because light waves travel faster through air than through glass (fiber optics), message latency is reduced. The continued use of this technology by the defense industry and regulation of the spectrum by the FCC demonstrates the secure nature of wireless networks.

[5] Nasdaq assesses a MITCH Wave Port installation fee of $5,000 for Mahwah installations and an ongoing monthly fee of $12,500. *See* Nasdaq Rule 7015(g)(1). Nasdaq assesses a MITCH Wave Port installation fee of $2,500 for Secaucus installations and an ongoing monthly fee of $7,500. *Id.* Nasdaq notes that the higher ongoing fee for Mahwah is reflective of the longer distance from Carteret to Mahwah requiring greater investment in infrastructure to connect the two locations.

[6] Nasdaq cannot preclude minor latency variances in delivery of Nasdaq ITTO in the third-party data centers to individual clients because it does not control the cross-connects in those centers; however, the microwave connectivity will provide the same latency to all clients' Remote ITTO Wave Ports and offers an improvement in latency over fiber optic network connectivity.