SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71736; File No. SR–BATS–2014–007]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of Certain Funds of the ProShares Trust

March 18, 2014.

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 13, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 is proposing to list and trade shares of certain funds (the ''Fund'' when discussed individually or, collectively, the ''Funds'') of the ProShares Trust (the ''Trust'') under BATS Rule 14.11(i) (''Managed Fund Shares''). The shares of the individual Funds are referred to herein as the ''Shares.''

The text of the proposed rule addition is available at the Exchange's Web site 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 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 Funds will be actively managed funds that seek to provide exposure (or inverse exposure) to the credit of a segment of the fixed income markets by selecting a broadly diversified, liquid credit derivative portfolio. The Adviser (as defined below) intends to obtain such credit exposure primarily via credit default swaps (''CDS'') that are centrally cleared and index-based.[4] ProFund Advisors LLC, an affiliate of the Adviser, has for over eight years managed mutual funds registered under the Investment Company Act of 1940 (the ''1940 Act'') that use both long and short unleveraged CDS investments as a principal investment strategy.

The Exchange believes that these Funds can benefit investors by providing the ability to hedge against declines, or profit from improvement in, the general credit quality of the North American and European investment grade and high yield debt markets. Short credit exposure can be valuable to investors seeking to protect their bond portfolios, particularly in periods of significant debt market stress or in a credit crisis (via the ''Short'' Funds, set forth below). Long credit exposure can be valuable for investors seeking to isolate improving credit quality as a source of return (via the ''Long'' Funds, set forth below). As investors increasingly seek to diversify, and at times hedge their investments, the Funds will provide access to these valuable tools with the protections of a 1940 Act mutual fund and the liquidity and transparency of the exchange traded fund (''ETF'') structure.

The Funds are also structured to address common concerns regarding counterparty risk and the use of leverage in CDS. To limit counterparty risk (while bolstering liquidity), the Funds will utilize primarily centrally cleared CDS contracts. The Funds may also invest, to a more limited extent, in exchange-traded futures contracts linked to index-based CDS (also known as ''credit index futures''), which are also centrally cleared.[5] In addition, the Funds will seek to obtain only non-leveraged long or short credit exposure, as applicable (*i.e.,* exposure equivalent to Fund assets). In contrast, many market participants utilize CDS to obtain leveraged exposure to credit of between 20x and 100x.

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on May 29, 2002. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[6]

Description of the Shares and the Funds

ProShare Advisors LLC is the investment adviser (''PSA'' or ''Adviser'') to the Funds. JPMorgan Chase Bank, National Association is the administrator, custodian, fund account agent, index receipt agent and transfer agent for the Trust. SEI Investments Distribution Co. (''Distributor'') serves as the distributor for the Trust.

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

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

[2] 17 CFR 240.19b–4.

[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] CDS provide exposure to the credit of one or more debt issuers referred to as ''reference entities.'' These instruments are designed to reflect changes in credit quality, including events of default. CDS are most commonly discussed in terms of buying or selling credit protection with respect to a reference entity. Selling credit protection is equivalent to being ''long'' credit. Buying credit protection is equivalent to being ''short'' credit. Index-based CDS provide credit exposure, through a single trade, to a basket of reference entities. A variety of index-based CDS with different characteristics are currently available in the marketplace with new issuances occurring periodically. Issuances typically vary in terms of underlying reference entities and maturity and, thus, can have significant differences in performance over time.

[5] As a general matter, futures contracts are standardized contracts traded on, or subject to the rules of, an exchange that call for the future delivery of a specified quantity and type of asset at a specified time and place or, alternatively, may call for cash settlement. Credit index futures provide exposure to the credit of a number of reference entities. Unlike CDS, certain credit index futures do not provide protection against events of default.

[6] *See* Registration Statement on Form N–1A for the Trust, dated May 31, 2013 (File Nos. 333–89822 and 811–21114). 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 Company 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).

company portfolio.[7] 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, but is currently affiliated with a broker-dealer and, in the future may be affiliated with other broker dealers. The Adviser personnel who make decisions regarding the Fund's [sic] portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's [sic] 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.

ProShares CDS North American HY Credit ETF

According to the Registration Statement, the Fund seeks to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the North American high yield credit market improves (*i.e.,* the likelihood of payment by North American high yield debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances,[8] at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of North American high yield debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[9]

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.[10] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps (CDS)

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[11]

The Adviser intends to utilize CDS to sell credit protection, thus obtaining long exposure to North American high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments [12] in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional long credit exposure to North American high yield debt issuers.

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 [13] under the 1940 Act.[14] The

[7] 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.

[8] The term ''under normal circumstances'' includes, but is not limited to, the absence of adverse market, economic, political, or other conditions, including extreme volatility or trading halts in the CDS markets, the related 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.

[9] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests in more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[10] 26 U.S.C. 851.

[11] As with exchange-traded futures contracts, holders of centrally cleared swaps do have counterparty risk relative to their Futures Commission Merchant (''FCM''). The Funds will select one or more large, well-capitalized institutions to act as their FCM.

[12] For each of the Funds, the specific money market instruments are Treasury securities and repurchase agreements and, in the future, may include money market fund shares.

[13] 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 trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

[14] The Commission has stated that long-standing Commission guidelines have required open-end

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.

ProShares CDS Short North American HY Credit ETF

According to the Registration Statement, the Fund seeks to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the North American high yield credit market declines (*i.e.,* the likelihood of payment by North American high yield debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of North American high yield debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[15]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[16] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[17]

The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to North American high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional returns, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional inverse credit exposure to North American high yield debt issuers.

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 under the 1940 Act. 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.

ProShares CDS North American IG Credit ETF

According to the Registration Statement, the Fund seeks to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American investment grade debt issuers. The Fund seeks to increase in value when the North American investment grade credit market improves (*i.e.,* the likelihood of payment by North American investment grade debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of North American investment grade debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[18]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as

---

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).

[15] *See supra* note 9.

[16] *See supra* note 10.

[17] *See supra* note 11.

[18] *See supra* note 9.

amended.[19] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[20]

The Adviser intends to utilize CDS to sell credit protection, thus obtaining exposure to North American investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional long credit exposure to North American investment grade debt issuers.

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 under the 1940 Act. 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.

ProShares CDS Short North American IG Credit ETF

According to the Registration Statement, the Fund seeks to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are North American investment grade debt issuers. The Fund seeks to increase in value when the North American investment grade credit market declines (*i.e.,* the likelihood of payment by North American investment grade debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of North American investment grade debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[21]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[22] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[23]

The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to North American investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional inverse credit exposure to North American investment grade debt issuers.

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 under the 1940 Act. 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.

ProShares CDS European HY Credit ETF

According to the Registration Statement, the Fund seeks to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European high-yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the European high yield credit market improves (*i.e.,* the likelihood of payment by European high yield debt issuers increases), while also seeking to

[19] *See supra* note 10.

[20] *See supra* note 11.

[21] *See supra* note 9.

[22] *See* supra note 10.

[23] *See supra* note 11.

limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

• Diversification—maintaining broadly diversified exposure to the credit of European high yield debt issuers;

• Liquidity—favoring CDS with greater relative liquidity; and

• Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[24]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[25] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[26] The Adviser intends to utilize CDS to sell credit protection, thus obtaining exposure to European high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional long credit exposure to European high yield debt issuers.

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 under the 1940 Act. 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.

ProShares CDS Short European HY Credit ETF

According to the Registration Statement, the Fund seeks to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European high yield (*i.e.,* below investment grade or ''junk bond'') debt issuers. The Fund seeks to increase in value when the European high yield credit market declines (*i.e.,* the likelihood of payment by European high yield debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single high yield debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

• Diversification—maintaining broadly diversified exposure to the credit of European high yield debt issuers;

• Liquidity—favoring CDS with greater relative liquidity; and

• Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[27]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[28] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[29]

The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to European high yield credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional inverse credit exposure to European high yield debt issuers.

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

[24] *See supra* note 9.

[25] *See supra* note 10.

[26] *See supra* note 11.

[27] *See supra* note 9.

[28] *See supra* note 10.

[29] *See supra* note 11.

Adviser under the 1940 Act. 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.

ProShares CDS European IG Credit ETF

According to the Registration Statement, the Fund seeks to provide long exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS for which the reference entities are European investment grade debt issuers. The Fund seeks to increase in value when the European investment grade credit market improves (*i.e.,* the likelihood of payment by European investment grade debt issuers increases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of European investment grade debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain long credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[30]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[31] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally associated with over-the-counter swaps is eliminated.[32]

The Adviser intends to utilize CDS to sell credit protection, thus obtaining long exposure to European investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional long credit exposure to European investment grade debt issuers.

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 under the 1940 Act. 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.

ProShares CDS Short European IG Credit ETF

According to the Registration Statement, the Fund seeks to provide inverse exposure to credit by investing primarily in a broadly diversified, liquid portfolio of index-based CDS and for which the reference entities are European investment grade debt issuers. The Fund seeks to increase in value when the European investment grade credit market declines (*i.e.,* the likelihood of payment by European investment grade debt issuers decreases), while also seeking to limit the impact of a change in the credit quality of any single investment grade debt issuer. To achieve its objective, the Fund will invest, under normal circumstances, at least 80% of its net assets in centrally cleared index-based CDS. The Adviser will actively manage the Fund, selecting credit derivatives based on the following primary considerations:

- Diversification—maintaining broadly diversified exposure to the credit of European investment grade debt issuers;
- Liquidity—favoring CDS with greater relative liquidity; and
- Sensitivity to Changes in Credit Quality—generally favoring credit derivatives having greater sensitivity to changes in credit quality.

The Adviser may, at times, also consider other factors such as the relative value of one credit derivative versus another.

The Fund will seek to obtain short credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund will typically have exposure to individual sectors to the same extent as the index-based instruments in which it invests.[33]

The Fund intends to qualify each year as a RIC under Subchapter M of the Internal Revenue Code of 1986, as amended.[34] The Fund will invest its assets, 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. The Fund will not invest in options or non-U.S. equity securities.

Credit Default Swaps

The Fund intends to primarily invest in centrally cleared, index-based CDS. Like exchange-traded futures contracts, centrally cleared swaps are cleared through a central clearinghouse and, as such, the counterparty risk traditionally

[30] *See supra* note 9.

[31] *See supra* note 10.

[32] *See supra* note 11.

[33] *See supra* note 9.

[34] *See supra* note 10.

associated with over-the-counter swaps is eliminated.[35]

The Adviser intends to utilize CDS to buy credit protection, thus obtaining inverse exposure to European investment grade credit. The Fund's investments in CDS will be consistent with the Fund's investment objective and will not be used to create leverage.

Other Portfolio Holdings

In addition to the instruments described above, the Fund will invest in money market instruments in a manner consistent with its investment objective in order to generate additional return, to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, and to provide collateral or to otherwise back investments in CDS and futures contracts.

The Fund may also invest in credit index futures in a manner consistent with its investment objective to a limited extent to obtain additional inverse credit exposure to European investment grade debt issuers.

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 under the 1940 Act. 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.

Net Asset Value

According to the Registration Statement, the net asset value (''NAV'') of the Shares of the Funds will be calculated by dividing the value of the net assets of such Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares outstanding, rounded to the nearest cent. 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 CDS North American HY Credit ETF, the CDS Short North American HY Credit ETF, the CDS North American IG Credit ETF, and the CDS Short North American IG Credit ETF (together, the ''North American Funds'') are generally determined at 3:00 p.m. Eastern Time each business day when the BATS Exchange is open for trading. The NAV of the CDS European HY Credit ETF, the CDS Short European HY Credit ETF, the CDS European IG Credit ETF, and the CDS Short European IG Credit ETF (together, the ''European Funds'') are generally determined at 11:00 a.m. Eastern Time (or such time as equals 4:00 p.m. London Time) on each business day that the BATS Exchange is open. If the BATS Exchange or market on which the [sic] 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.

To the extent that the reference entities underlying the CDS and related futures contracts trade in foreign markets on days when a Fund is not open for business, the value of the Fund's assets may vary and shareholders may not be able to purchase or sell Fund Shares and Authorized Participants may not be able to create or redeem Creation Units.

Securities and other assets are generally valued at their market price using information provided by a pricing service or market quotations. Certain short-term securities are valued on the basis of amortized cost. CDS are generally valued on the basis of market prices, generally the midpoint between the bid/ask quotes, obtained from a third-party pricing service as of the time a Fund calculates its NAV. Futures contracts, such as the credit index futures, are generally valued at their last sale price prior to the time at which the NAV per share of a class of shares of a Fund is determined. Of the money market instruments held by the Funds, repurchase agreements are generally valued at cost. U.S government securities are generally priced at a quoted market price from an active market, generally the midpoint between the bid/ask quotes. For U.S. government securities that mature within sixty days, amortized cost may be used to approximate fair value. Money market funds would generally be valued at their current Net Asset Value per share, typically $1.00 per share. Alternatively, fair valuation procedures as described below may be applied if deemed more appropriate. Routine valuation of certain other derivatives is performed using procedures approved by the Board of Trustees.

When the Adviser determines that the price of a security or derivative is not readily available or deems the price unreliable, it may, in good faith, establish a fair value for that security or derivative in accordance with procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees. The use of a fair valuation method may be appropriate if, for example, market quotations do not accurately reflect fair value for an investment, a trading halt closes an exchange or market early, or other events result in an exchange or market delaying its normal close. The Adviser may consider applying appropriate valuation methodologies, which may include discounts of market value of similar freely traded securities, yields to maturity, or any other appropriate method. In determining the appropriate methodology, the Adviser may consider all relevant factors, including, among other things: Fundamental analytical data; the types of securities affected; pricing history of the security; whether dealer quotations are available; liquidity of the market; news or other events; and other factors the Adviser deems relevant.

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

The Shares

The Funds will issue and redeem Shares on a continuous basis at the NAV per Share only in large blocks of a specified number of Shares or multiples thereof (''Creation Units'') in transactions with authorized participants who have entered into agreements with the Distributor. The Adviser currently anticipates that a Creation Unit will consist of 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 Funds 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 Funds may consist of an in-kind deposit of a designated portfolio of securities (including any portion of such assets for which cash may be substituted) (*i.e.,* the ''Deposit Assets''), and the ''Cash Component'' computed as described below. Together, the Deposit Assets and the Cash Component constitute the

[35] *See supra* note 11.

''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit of the Funds. 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 Funds.

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 Funds generally offer Creation Units partially or entirely for cash. PSA 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 Security [sic] 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 Funds.

The identity and number or par value of the Deposit Assets may change pursuant to changes in the composition of the Funds' 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 Funds.

The Funds reserve 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 Security [sic] 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.

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. Currently, such orders must be received in proper form no later than 2:30 p.m. Eastern Time for the North American Funds or 10:30 a.m. Eastern Time (or such time as equals 3:30 p.m. London Time) for the European Funds, in each case 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 Funds 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 bond markets close earlier than normal, the Funds may require orders to create or to redeem Creation Units to be placed earlier in the day.

Fund Deposits must be delivered through either the Continuous Net Settlement facility of the NSCC, the Federal Reserve System (for cash and government securities), through DTC (for corporate and municipal securities), or through a central depository account, such as with Euroclear or DTC, maintained by State Street or a sub-custodian (a ''Central Depository Account''), in any case at the discretion of the Adviser, by an authorized participant. Any portion of a Fund Deposit that may not be delivered through the NSCC, Federal Reserve System or DTC must be delivered through a Central Depository Account.

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

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

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

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an authorized participant by a time specified by the Adviser. Currently, such requests must be received no later than 2:30 p.m. Eastern Time on any business day, in order to receive that day's NAV (for the North American Funds) or 10:30 a.m. Eastern Time (or such time as equals 3:30 p.m. London Time) for the European Funds. The authorized participant must transmit the request for redemption in the form required by the Funds to the Distributor in accordance with procedures set forth in the authorized participant agreement.

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

Availability of Information

The Funds' Web sites, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Web sites will include additional quantitative information updated on a daily basis, including, for the Funds: (1) The prior business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask price''),[36] daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. On each business day, before commencement of trading in Shares during Regular Trading Hours[37] on the Exchange, the Funds will disclose on their Web sites the identities and quantities of the portfolio of CDS, futures, and other assets (the ''Disclosed Portfolio'') held by the Funds that will form the basis for the Funds' calculation of NAV at the end of the business day.[38]

[36] The Bid/Ask Price of the Funds 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 Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

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

[38] Under accounting procedures to be followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of

The Disclosed Portfolio will include, as applicable, the names (including the credit derivative series or contract), quantity, exposure value (notional value + gains/losses), and market value of CDS, futures, and other assets held by the Funds and the characteristics of such assets. The Web sites and information will be publicly available at no charge.

In addition, for the Funds, 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 individual 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.[39] In addition, the quotations of certain of the Funds' holdings may not be updated during U.S. trading hours if such holdings do not trade in the United States or if updated prices cannot be ascertained.

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

Intraday price quotations on CDS of the type held by the Funds, as well as repurchase agreements and Treasury instruments, 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 contracts, 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. Money market fund shares are not generally priced or quoted on an intraday basis.

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

Initial and Continued Listing

The Shares will be subject to BATS Rule 14.11(i), which sets forth the initial and continued listing criteria applicable to Managed Fund Shares. The Exchange represents that, for initial and/or continued listing, the Funds must be in compliance with Rule 10A–3 [40] under the Act. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of any of the Funds. The Exchange will halt trading in the Shares under the conditions specified in BATS Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the CDS, futures, and/or the financial instruments composing the Disclosed Portfolio of the Funds; 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 Funds may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BATS will allow trading in the Shares from 8:00 a.m. until 5:00 p.m. Eastern Time. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BATS Rule 11.11(a), the minimum price variation for quoting and entry of orders in Managed Fund Shares traded on the Exchange is $0.01, with the exception of securities that are priced less than $1.00, for which the minimum price variation for order entry is $0.0001.

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 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.[41] 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 is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening [42] and After Hours Trading Sessions [43] when an updated Intraday Indicative Value will not be calculated or publicly

the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[39] 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.

[40] *See* 17 CFR 240.10A–3.

[41] 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 Funds 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 Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

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

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 of the Funds and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Funds will be publicly available on the Funds' 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[44] in general and Section 6(b)(5) of the Act[45] 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 regarding trading in the Shares and the underlying futures via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[46] In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's TRACE.

According to the Registration Statement, each Fund expects that, under normal circumstances, it will have at least 80% of its assets invested in index-based North American or European CDS. The Funds may also invest, to a limited extent, in credit index futures. In order to limit counterparty risk, bolster liquidity, and increase price transparency, all CDS utilized by the Funds will be centrally cleared and all futures contracts will be exchange-traded. Each Fund will seek to obtain long or short credit exposure equivalent to its assets and will not provide leveraged exposure to credit. The Fund also may invest its net assets in money market instruments in order to help manage cash flows in and out of the Funds.

Additionally, the Funds may individually hold up to an aggregate amount of 15% of their net assets in illiquid assets (calculated at the time of investment). The [sic] 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 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 [sic] 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 Funds' Web sites 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 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 Funds will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Trading in Shares of the Funds 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 Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the Intraday Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

Intraday price quotations on CDS of the type held by the Funds, as well as repurchase agreements and Treasury instruments are available from major broker-dealer firms. Such 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. Money market fund shares are not generally priced or quoted on an intraday basis.

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

[44] 15 U.S.C. 78f.

[45] 15 U.S.C. 78f(b)(5).

[46] *See* note 41, *supra.*

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 [sic] 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 will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among market participants, 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 up to 90 days (i) as the Commission may designate 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 the 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–2014–007 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–2014–007. 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 also will 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–2014–007 and should be submitted on or before April 14, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06304 Filed 3–21–14; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71731; File No. SR–Phlx–2014–16]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Provide That Market Maker Complex Orders Cannot Initiate a Complex Order Live Auction

March 18, 2014.

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 12, 2014, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') 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 proposes to provide that market maker Complex Orders cannot initiate a Complex Order Live Auction.

The text of the proposed rule change is below; proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 1080. Phlx XL and Phlx XL II

(a)–(p) No change.

Commentary

.01–.07 No change.

.08 Complex Orders on Phlx XL.

(a)–(d) No change.

(e) Process for Complex Order Live Auction (''COLA''). Complex Orders on the Complex Order Book (''CBOOK,'' as defined below) may be subject to an automated auction process.

(i) For purposes of paragraph (e):

(A) No change.

(B) (1) A ''COLA-eligible order'' means a Complex Order (a) identified by way of a COOP, or (b) that, upon receipt, improves the cPBBO respecting the specific Complex Order Strategy that is the subject of the Complex Order *and is not for a market maker, as specified in Rule 1080.08(b)(ii).* If the Phlx XL system identifies the existence of a COLA-eligible order following a COOP

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

[2] 17 CFR 240.19b–4.