

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-NYSEMKT-2016-48, and should be submitted on or before August 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>39</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78346; File No. SR-BatsBZX-2016-34]

### Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to BZX Rule 14.11(i), Managed Fund Shares, To List and Trade Shares of the ProShares Crude Oil Strategy ETF, a Series of ProShares

July 15, 2016.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on July 1, 2016, Bats BZX Exchange, Inc. (the "Exchange" or "BZX") 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 filed a proposal to list and trade shares of the ProShares Crude Oil Strategy ETF (the "Fund"), a series of ProShares Trust (the "Trust"), under 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](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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade the Shares under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>4</sup> The Fund will be an actively managed fund that seeks to provide long term capital appreciation, primarily through exposure to the West Texas Intermediate ("WTI") crude oil futures markets.

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 Fund on Form N-1A ("Registration Statement") with the Commission.<sup>5</sup> 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, the Adviser has registered as a Commodity Pool Operator ("CPO") and is also 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 WTI crude oil markets via investments in the Subsidiary. These investments are intended to provide the Fund with exposure to WTI crude oil 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 its investment in the Subsidiary.

##### Description of the Shares and the Fund

ProShare Advisors LLC is the investment adviser ("Adviser") to the Fund and the Subsidiary. JPMorgan Chase Bank, National Association ("JP Morgan") 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.

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>6</sup> In

herein are based, in part, on information contained 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).

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940, as amended (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

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<sup>39</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> The Commission approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

<sup>5</sup> See Registration Statement on Form N-1A for the Trust, filed with the Commission on May 3, 2016 (File Nos. 333-89822 and 811-21114). The descriptions of the Fund and the Shares contained

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 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 has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Fund's portfolio. 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.

#### ProShares Crude Oil Strategy ETF

According to the Registration Statement, the Fund is an actively

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.

managed fund that seeks to provide long term capital appreciation, primarily through exposure to the WTI crude oil futures markets, which include only those WTI crude oil contracts traded on the New York Mercantile Exchange and ICE Futures Europe ("WTI Crude Oil Futures"). The Fund's active strategy seeks to provide this exposure by rolling WTI Crude Oil Futures contracts (e.g., selling a futures contract as it nears its expiration date and replacing it with a new futures contract that has a later expiration date). The Fund generally selecting between first, second and third month WTI Crude Oil Futures contracts based on an analysis of the liquidity and cost surrounding such positions.

The Fund generally will not invest directly in WTI Crude Oil Futures. The Fund expects to gain exposure to these investments by investing a portion of its assets in the Subsidiary.<sup>7</sup> The Subsidiary is 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 the WTI crude oil markets in accordance with applicable rules and regulations. The Subsidiary has the same investment objective as the Fund. The Fund will generally invest up to 25% of its total assets in the Subsidiary and, through such investment, generally remain fully exposed to WTI Crude Oil Futures, even during times of adverse market conditions. Such positions are generally collateralized by the Fund's positions in Cash Assets, as defined below.

In order to achieve its investment objective, the Fund will invest in: (i) WTI Crude Oil Futures; and (ii) Cash Assets (which are used to collateralize the WTI Crude Oil Futures), which will, under normal circumstances,<sup>8</sup> be held

<sup>7</sup> The Subsidiary is not registered under the 1940 Act and is not directly subject to its investor protections, except as noted in the Registration Statement. However, the Subsidiary is wholly-owned and controlled by the Fund and is advised by the Adviser. Therefore, because of the Fund's ownership and control of the Subsidiary, the Subsidiary would not take action contrary to the interests of the Fund or its shareholders. The Fund's Board of Trustees ("Board") has oversight responsibility for the investment activities of the Fund, including its expected investment in the Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiary. The Subsidiary will also enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

<sup>8</sup> 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;

in cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including US agency securities, shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities). The Fund will use the Cash Assets to meet asset coverage tests resulting from the Subsidiary's derivative exposure on a day-to-day basis. As a whole, the Fund's investments are meant to achieve its investment objective within the limitations of the federal tax requirements applicable to regulated investment companies. The Fund does not invest in nor seek exposure to the current "spot" or cash price of physical crude oil. WTI Crude Oil Futures contracts typically perform very differently from, and commonly underperform, the spot price of WTI crude oil.

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

#### Investment Restrictions

While the Fund does not currently anticipate holding illiquid assets, it may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser<sup>10</sup> under the 1940 Act.<sup>11</sup> The Fund will monitor

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.

<sup>9</sup> 26 U.S.C. 851.

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

<sup>11</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December

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

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

#### Net Asset Value

According to the Registration Statement, the net asset value ("NAV") of the Shares of 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 2:30 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.

U.S. Treasury and agency securities will generally be 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. WTI Crude Oil Futures are generally valued at their settlement price as determined by the relevant exchange. Repurchase agreements, variable rate demand notes, overnight

bank deposits, and overnight bank money market accounts are generally valued at cost. Bank money market accounts and time deposits with terms greater than a single day are fair valued per the procedures below. Money market funds would generally be valued at their current Net Asset Value per share, typically \$1.00 per share.

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 Board. 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 instruments affected; pricing history of the instrument; 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 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 25,000 Shares, though this number may change from time to time, including prior to listing of the Shares. The exact number of Shares that will constitute a Creation Unit will be disclosed in the Registration Statement. Once created, Shares of 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 Fund generally offers Creation Units partially or entirely for cash. 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.<sup>12</sup>

<sup>12</sup> The Adviser represents that, to the extent the Trust permits or requires a "cash in lieu" amount,

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).

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 2:00 p.m. Eastern Time on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the Fund as next determined on such date after receipt of the order in proper form. The "Settlement Date" is generally the third business day after the transmittal date. On days when the Exchange or the futures markets close earlier than normal, the Fund may require orders to create or to redeem Creation Units to be placed earlier in the day.

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 securities), or through a central depository account, such as with Euroclear or DTC, maintained by JP Morgan (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 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. The 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 may be imposed to offset transfer and other transaction costs that may be incurred by the Fund.

such transactions will be effected in the same or equitable manner for all authorized participants.

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 2:00 p.m. Eastern Time on any business day, in order to receive that day's NAV. The authorized participant must transmit the request for redemption in the form required by the Fund to the Distributor in accordance with procedures set forth in the authorized participant agreement.

Additional information regarding the Shares and the 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.ProShares.com](http://www.ProShares.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 sites will include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV, the closing market price or the midpoint of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>13</sup> daily trading volume, and a calculation of the premium and discount of the closing market price or Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing market price or Bid/Ask 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<sup>14</sup>

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

<sup>14</sup> Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio WTI Crude Oil 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.<sup>15</sup> The Disclosed Portfolio will include, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the 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 Rule 14.11(i)(3)(C) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.<sup>16</sup> In addition, the quotations of certain of the Fund's holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours.

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

Intraday price quotations on cash equivalents 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 WTI Crude Oil Futures, such intraday information is available directly from the applicable listing exchange. Intraday price

<sup>15</sup> Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

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

information is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to money market fund shares will be available through issuer Web sites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. 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 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.<sup>17</sup> 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 the Fund. The Exchange will halt trading in the Shares under the conditions specified in 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 WTI Crude Oil 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. The Exchange 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 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.<sup>18</sup> In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). The Exchange prohibits the distribution of material non-public information by its employees.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units

(and that Shares are not individually redeemable); (2) Exchange 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<sup>19</sup> and After Hours Trading Sessions<sup>20</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to 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<sup>21</sup> in general and Section 6(b)(5) of the Act<sup>22</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in

<sup>18</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. At least 90% of the weight of the futures contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

<sup>19</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>20</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

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

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 BZX 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, but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio. At least 90% of the weight of the futures contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Shares and at least 90% of the weight of the underlying futures contracts held by the Fund via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>23</sup> In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA’s TRACE.

The Fund expects that it will generally seek to remain fully exposed to WTI Crude Oil Futures even during times of adverse market conditions. Under normal circumstances, the Fund’s cash assets (which are used to collateralize the WTI Crude Oil Futures) will be held in: Cash or cash equivalents such as U.S. Treasury securities or other high credit quality short-term fixed-income or similar securities (including U.S. agency securities, shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase

agreements collateralized by government securities).

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 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 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 BZX 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 BZX 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 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. Major broker-dealer firms will also provide intraday quotes on swaps of the type held by the Fund. For WTI Crude Oil 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. Pricing information related to money market fund shares will be available through issuer Web sites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. 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 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. At least 90% of the weight of the futures contracts held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing

<sup>23</sup> See note 18, *supra*.

agreement. 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 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 self-regulatory organization 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](mailto:rule-comments@sec.gov). Please include File Number SR-BatsBZX-2016-34 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-BatsBZX-2016-34. 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-BatsBZX-2016-34 and should be submitted on or before August 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Robert W. Errett,**

*Deputy Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-78342; File No. SR-ISEMercury-2016-13]

#### **Self-Regulatory Organizations; ISE Mercury, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Price Improvement Mechanism Pilot Program**

July 15, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2016, ISE Mercury, LLC (the "Exchange" or "ISE Mercury") 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 self-regulatory organization. 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 extend two pilot programs related to its Price Improvement Mechanism ("PIM"). The text of the proposed rule change is available on the Exchange's Web site [www.ise.com](http://www.ise.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 self-regulatory organization 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 self-regulatory organization 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**

The Exchange currently has two pilot programs related to its PIM (collectively, the "PIM Pilot Programs" or "Pilot

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

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

<sup>24</sup> 17 CFR 200.30-3(a)(12).