

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77620; File No. SR-BATS-2015-124]

### Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 5, To List and Trade Shares of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust

April 14, 2016.

#### I. Introduction

On December 30, 2015, BATS Exchange, Inc. (“Exchange” or “BATS”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF (each a “Fund” and collectively, “Funds”) of the Exchange Traded Concepts Trust (“Trust”) under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 20, 2016. <sup>3</sup> On February 10, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, and on February 12, 2016, the Exchange filed Amendment No. 2 to the proposed rule change. <sup>4</sup> On March 3, 2016, pursuant to Section 19(b)(2) of the Act, <sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. <sup>6</sup> On March 28, 2016, the Exchange filed Amendment No. 5 to the proposed rule change. <sup>7</sup> The Commission received no

comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, and 5.

#### II. The Exchange’s Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust. According to the Exchange, 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. <sup>8</sup> Exchange Traded Concepts, LLC will be the investment adviser (“Adviser”) <sup>9</sup> to the Funds and Vident Investment Advisory, LLC will be the sub-adviser (“Sub-Adviser”) to the Funds. <sup>10</sup> SEI

leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities; (2) provided additional clarification regarding the investment objective and investment restrictions of the Subsidiaries; (3) clarified how certain investments will be valued for computing each Fund’s net asset value; (4) clarified where price information can be obtained for certain investments of the Funds; (5) supplemented the description of the information that will be contained in the Information Circular; (6) clarified that all statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (7) stated that the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements, and if a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12; and (8) made other technical amendments. Because Amendment No. 5 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 5 is not subject to notice and comment. Amendment No. 5 is available at <http://www.sec.gov/comments/sr-bats-2015-124/bats2015124-5.pdf>.

<sup>8</sup> See Registration Statement on Form N-1A for the Trust, dated December 29, 2015 (File Nos. 333-156529 and 811-22263). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (“1940 Act”). See Investment Company Act Release No. 30445 (April 2, 2013) (File No. 812-13969).

<sup>9</sup> The Exchange states that the Adviser is registered as a Commodity Pool Operator and that the Funds and their respective Subsidiaries (as defined below) will be subject to regulation by the Commodity Futures Trading Commission and to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

<sup>10</sup> The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer or is affiliated with a broker-dealer. The Exchange states that in the event that (a) the Adviser or Sub-Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-

Investments Global Funds Services serves as administrator for the Trust (“Administrator”); Brown Brothers Harriman & Co. serves as custodian, transfer agent, and dividend disbursing agent for the Trust; and SEI Investments Distribution Co. serves as the distributor for the Trust. <sup>11</sup>

#### A. The Funds’ Investments

According to the Exchange, the REX VolMAXX Long VIX Weekly Futures Strategy ETF seeks to provide investors with long exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded futures contracts based on the Chicago Board Options Exchange, Incorporated (“CBOE”) Volatility Index (“VIX Index”) (such futures contracts, “VIX Futures Contracts”) with weekly and monthly expirations. According to the Exchange, the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF seeks to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded VIX Futures Contracts with weekly and monthly expirations. <sup>12</sup>

According to the Exchange, each Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures Contracts with weekly and

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.

<sup>11</sup> The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value (“NAV”), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 5, and the Registration Statement, as applicable. See Notice, *supra* note 3, Amendment No. 5, *supra* note 7, and Registration Statement, *supra* note 8.

<sup>12</sup> The Exchange represents that while the REX VolMAXX Long VIX Weekly Futures Strategy ETF generally will seek exposure to the VIX Index and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF generally will seek inverse exposure to the VIX Index, the Funds are not index tracking funds and will generally seek to enhance their performance by actively selecting VIX Futures Contracts of varying maturities and they can be expected to perform very differently from the VIX Index over all periods of time.

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

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

<sup>3</sup> See Securities Exchange Act Release No. 76884 (January 13, 2016), 81 FR 3195 (“Notice”).

<sup>4</sup> On March 22, 2016, the Exchange filed Amendment No. 3 to the proposed rule change. On March 28, 2016, the Exchange withdrew Amendment No. 3 and filed and withdrew Amendment No. 4 to the proposed rule change.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 77287, 81 FR 12540 (March 9, 2016).

<sup>7</sup> Amendment No. 5 replaced Amendment No. 1 (as subsequently amended by Amendment No. 2), which replaced and superseded the original filing in its entirety. In Amendment No. 5, the Exchange: (1) Provided additional clarification and specificity regarding the instruments in which the Funds may invest, including that the Funds will not invest in

monthly expirations.<sup>13</sup> The Exchange states that each Fund will obtain such exposure by investing, through both long and short positions, only in the following instruments: VIX Futures Contracts;<sup>14</sup> total return swap agreements that provide exposure to VIX Futures Contracts;<sup>15</sup> the securities of other investment companies,<sup>16</sup> other pooled investment vehicles,<sup>17</sup> and exchange-traded notes<sup>18</sup> that provide exposure to VIX Futures Contracts; options on securities, securities indices, and currencies;<sup>19</sup> repurchase

<sup>13</sup> According to the Exchange, the REX VolMAXX Long VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of its assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times. The REX VolMAXX Inverse VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of its assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

<sup>14</sup> The Exchange represents that all VIX Futures Contracts held by the Funds will be exchange-traded.

<sup>15</sup> The Exchange states that to the extent practicable, each Fund will invest in swaps cleared through the facilities of a centralized clearing house. The Exchange also states that, to the extent that a Fund invests in swaps that are not centrally cleared, the Adviser will attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. According to the Exchange, the Adviser will take various steps to limit counterparty credit risk. The Exchange represents that each Fund's investments in over-the-counter ("OTC") derivatives will not exceed 20% of its assets.

<sup>16</sup> Each Fund may invest in the securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include only the following: The securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)); and money market mutual funds. The Exchange represents that although the Funds may invest in inverse investment company securities, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) investment company securities.

<sup>17</sup> According to the Exchange, pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). The Exchange represents that although the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) pooled investment vehicles.

<sup>18</sup> The Exchange represents that although the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETNs.

<sup>19</sup> The Exchange states that all options written on indices or securities will be covered. According to the Exchange, for all OTC options, the Funds will

agreements<sup>20</sup> and reverse repurchase agreements;<sup>21</sup> and cash or cash equivalents (which include commercial paper<sup>22</sup> and U.S. government obligations<sup>23</sup>) to collateralize its exposure to the VIX Futures Contracts and for investment purposes.

Each of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF expects to gain exposure to certain of these investments by investing a portion of its assets in its wholly-owned Cayman Islands subsidiary, the REX VolMAXX Long VIX Weekly Futures Strategy Subsidiary I and the REX VolMAXX Inverse VIX Weekly Futures Strategy Subsidiary I, respectively (each a "Subsidiary" and, collectively, "Subsidiaries"). The Subsidiaries will be advised by the Adviser.<sup>24</sup> According to the Exchange,

seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Exchange represents that the Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis.

<sup>20</sup> According to the Exchange, the Funds follow certain procedures designed to minimize the risks inherent in repurchase agreements. The Exchange represents that it is the current policy of each Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The Exchange states that the investments of the Funds in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.

<sup>21</sup> According to the Exchange, each Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to its obligations in respect of reverse repurchase agreements. The Exchange represents that each Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets.

<sup>22</sup> The Exchange states that the Funds may invest in commercial paper rated A-1 or A-2 by Standard and Poor's Ratings Services or Prime-1 or Prime-2 by Moody's Investors Service, Inc.

<sup>23</sup> U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.

<sup>24</sup> The Exchange states that the Subsidiaries are not registered under the 1940 Act and are not directly subject to its investor protections, except as noted in the Registration Statement. However, according to the Exchange, each Subsidiary is wholly-owned and controlled by its respective Fund and is advised by the Adviser. Therefore, according to the Exchange, because of each Fund's ownership and control of its Subsidiary, the Subsidiary will not take action contrary to the interests of its respective Fund or its shareholders. Each Fund's Board of Trustees ("Board") has oversight responsibility for the investment activities of the Fund, including the Fund's expected investment in its Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing

each Fund's investment in its Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Funds, which limit the ability of investment companies to invest directly in certain futures contracts. According to the Exchange, each Subsidiary will have the same investment objective and investment restrictions as its applicable Fund and, except as otherwise noted, references to each Fund's investments may also be deemed to include the Fund's indirect investments through its Subsidiary. Each Fund will invest up to 25% of its total assets in its Subsidiary.

Each Fund may lend its portfolio securities in an amount not to exceed 33⅓% of the value of its total assets, and each Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day. The Exchange represents that aside from each Fund's investments in its Subsidiary, each Fund and its Subsidiary will not invest in non-U.S. equity securities or options.

Each Fund intends to qualify each year as a regulated investment company under the Internal Revenue Code.

## B. The Funds' Investment Restrictions

Each 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<sup>25</sup> under the 1940 Act. Each 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

the assets of the Subsidiaries. The Exchange states that each Subsidiary will 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 applicable Fund.

<sup>25</sup> The Exchange states that, in reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

markets as determined in accordance with Commission staff guidance.

Each Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns.

### III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>26</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 5, is consistent with Section 6(b)(5) of the Act,<sup>27</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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 Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>28</sup> which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"), and 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. Additionally, 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. 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.

In addition, for each Fund, the Intraday Indicative Value<sup>29</sup> 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>30</sup> On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio<sup>31</sup> that will form the basis for the Fund's calculation of NAV at the end of the business day.<sup>32</sup> Each Fund's Web site will also include a form of the prospectus for the Fund that may be downloaded and additional data relating to NAV and other applicable quantitative information.

Intraday price quotations on cash and cash equivalents, repurchase agreements, and reverse repurchase agreements of the type held by the Funds 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. Price information for investment company securities (other than exchange-traded investment company securities) will be available from the applicable investment company's Web site and from market data vendors. Price information for OTC-traded options will be available from market data vendors. Major broker-dealer firms will provide intraday quotes on swaps of the type held by the Funds. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment

companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. 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. For VIX Futures Contracts, intraday information is available directly from CBOE. Intraday price information for the underlying investments of the Funds is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The 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. Further, trading in the Shares will be subject to BATS Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of a Fund may be halted. 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. These may include: (1) The extent to which trading is not occurring in the instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.<sup>33</sup> The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange states that neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer and that, in the event that (a) the Adviser or Sub-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

<sup>26</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>27</sup> 15 U.S.C. 78f(b)(5).

<sup>28</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>29</sup> According to the Exchange, the Intraday Indicative Value for each Fund will reflect an estimated intraday value of such Fund's portfolio, and will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The quotations of certain of the Funds' 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 Exchange's Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

<sup>30</sup> The Exchange notes that several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds.

<sup>31</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 strike price for any options, 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.

<sup>32</sup> The NAV of each Fund will generally be determined at 4:15 p.m. Eastern Time each business day when the Exchange is open for trading.

<sup>33</sup> See BATS Rule 14.11(i)(4)(B)(ii)(b).

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.<sup>34</sup> 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. The Exchange may obtain information regarding trading in the Shares, exchange-listed options, exchange-listed equity securities, 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. 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.

The Exchange represents that it 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. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets for the initial and continued listing criteria applicable to Managed Fund Shares.

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

(3) Trading of the Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Managed Fund Shares, and such 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.

(4) 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: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually

redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions (as defined in the Exchange’s rules) when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, each Fund must be in compliance with Rule 10A–3 under the Act.<sup>35</sup>

(6) All VIX Futures Contracts held by the Funds will be exchange-traded.

(7) All of the futures contracts in the Disclosed Portfolio for each Fund (including futures contracts held by each Subsidiary) will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(8) Aside from each Fund’s investments in its Subsidiary, neither the Fund nor its respective Subsidiary will invest in non-U.S. equity securities or options.

(9) Although the Funds may invest in inverse investment company securities, pooled investment vehicles, and ETNs, the Funds will not invest in leveraged (e.g., 2X, –2X, 3X or –3X) investment company securities, pooled investment vehicles, or ETNs.

(10) Each Fund’s investments in OTC derivatives will not exceed 20% of its assets.

(11) Each 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. Each 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.

(12) Each Fund’s investments will be consistent with the Fund’s investment objective and will not be used to

achieve leveraged or inverse leveraged returns.

(13) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

This approval order is based on all of the Exchange’s representations, including those set forth above and in Amendment No. 5. The Commission notes that the Funds and the Shares must comply with the requirements of BATS Rule 14.11(i) to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 5, is consistent with Section 6(b)(5) of the Act<sup>36</sup> and Section 11A(a)(1)(C)(iii) of the Act<sup>37</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>38</sup> that the proposed rule change (SR–BATS–2015–124), as modified by Amendment Nos. 1, 2, and 5, be, and it hereby is, approved.

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

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

[FR Doc. 2016–09062 Filed 4–19–16; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>34</sup> The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

<sup>35</sup> See 17 CFR 240.10A–3.

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> 15 U.S.C. 78k–1(a)(1)(C)(iii).

<sup>38</sup> 15 U.S.C. 78s(b)(2).

<sup>39</sup> 17 CFR 200.30–3(a)(12).