



8011-01p
SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77567; File No. SR-BATS-2015-94)

April 8, 2016

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Approving on an Accelerated Basis a Proposed Rule Change, as Modified by Amendments No. 1, No. 2, and No. 3, to List and Trade Shares of the SPDR DoubleLine Emerging Markets Fixed Income ETF of the SSgA Active Trust

I. Introduction

On December 28, 2015, BATS Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares of the SPDR[®] DoubleLine[®] Emerging Markets Fixed Income ETF of the SSgA Active Trust under BATS Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on January 15, 2016.³ On February 23, 2016, pursuant to Section 19(b)(2) of the Act,⁴ 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.⁵ On February 26, 2016, the Exchange filed Amendment No. 1 to the proposal.⁶ On March 24, 2016, the Exchange filed Amendment No. 2 to the proposal.⁷ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 76862 (Jan. 11, 2016), 81 FR 2282.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 77209, 81 FR 10315 (Feb. 29, 2016). The Commission designated April 14, 2016, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ Amendment No. 1 replaced and superseded the proposed rule change in its entirety. In Amendment No. 1, the Exchange clarified that: (1) the Fund may invest without limit in

April 7, 2016, Exchange filed Amendment No. 3 to the proposed rule change.⁸ The Commission has received no comments on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendments No. 1, No. 2, and No. 3, on an accelerated basis.

investments denominated in any currency, but expects to invest a portion of its assets in U.S.-dollar-denominated investments; (2) the Fund may invest up to 20% of its portfolio in structured securities and junior bank loans; and (3) to limit the potential risk associated with derivative transactions, the Fund will segregate or “ earmark ” assets determined to be liquid by the Adviser in accordance with procedures established by the Trust’s Board of Trustees and in accordance with the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments, and will include appropriate risk disclosure in its offering documents, including leveraging risk. Amendment No. 1 also adds a representation that the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives, and makes changes of a technical nature. The amendments to the proposed rule change are available at: <http://www.sec.gov/comments/sr-bats-2015-94/bats201594.shtml>.

⁷ In Amendment No. 2, the Exchange clarifies that: (1) all statements and representations made in this 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 shall constitute continued listing requirements for listing the Shares on the Exchange; and (2) the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. Because Amendment No. 2 adds clarification to the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

⁸ In Amendment No. 3, the Exchange made a conforming change to confirm that the Fund may invest in unsponsored American Depositary Receipts (“ADRs”), which are not exchange traded. Because Amendment No. 3 clarifies the proposal and does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 3 is not subject to notice and comment.

II. The Exchange's Description of the Proposal⁹

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. The Shares will be offered by SSgA Active Trust ("Trust"), which is organized as a Massachusetts business trust and is registered with the Commission as an open-end management investment company.¹⁰

SSGA Funds Management, Inc. will serve as the investment adviser to the Fund ("Adviser")¹¹ as well as the administrator for the Fund. DoubleLine Capital LP will be the Fund's sub-adviser ("Sub-Adviser"). State Street Global Markets, LLC will be the principal underwriter and

⁹ Additional information regarding, among other things, the Shares, the Fund, its investment objective, its investments, its investment strategies, its investment methodology, its investment restrictions, its fees, its creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures can be found in Amendment No. 1 and in the Registration Statement. See Amendment No. 1, supra note 6, and Registration Statement, infra note 10, respectively.

¹⁰ See Registration Statement on Form N-1A for the Trust, dated October 8, 2015 (File Nos. 333-173276 and 811-22542) ("Registration Statement"). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29524 (December 13, 2010) (File No. 812-13487).

¹¹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel as well as the Sub-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.

distributor of the Shares. State Street Bank and Trust Company will serve as the sub-administrator, custodian (“Custodian”), transfer agent, and, where applicable, lending agent (“Lending Agent”) for the Fund.

Neither the Adviser nor the Sub-Adviser is registered as a broker-dealer, but the Adviser is affiliated with a broker-dealer and has implemented a “fire wall” with respect to that broker-dealer regarding access to information concerning the composition of and changes to the Fund’s portfolio. The Sub-Adviser is not affiliated with a broker-dealer.¹²

A. Principal Investments of the Fund

The Fund is an actively managed fund that does not seek to replicate the performance of a specified index. The Fund will seek to provide high total return from current income and capital appreciation. To achieve its objective, the Fund will invest, under normal circumstances,¹³ at least 80% of its net assets (plus the amount of borrowings for investment purposes) in emerging-market fixed income securities.¹⁴ More specifically, the Fund will invest at least 80% of its net assets (plus the amount of borrowings for investment purposes) in fixed income instruments

¹² See Amendment No. 1, supra note 6, at 6. In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate regarding access to information concerning the composition of and 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. See id.

¹³ The term “under normal circumstances” includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income 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.

¹⁴ Under normal market conditions, the Sub-Adviser intends to seek to construct an investment portfolio with a weighted average effective duration of no less than two years and no more than eight years.

(“Fixed Income Securities”), which are defined as the following instruments: fixed income securities issued or guaranteed by foreign corporations¹⁵ or foreign governments, including securities issued or guaranteed by companies (including hybrid securities), financial institutions, or government entities in emerging market countries; corporate or government bonds; sovereign debt; structured securities;¹⁶ foreign currency transactions (discussed below); certain derivatives (discussed below); exchange-traded foreign equity securities (described below) and preferred securities; unsponsored ADRs;¹⁷ zero coupon bonds; credit linked notes; pass-through notes; bank loans; and perpetual maturity bonds. Fixed Income Securities may have fixed or variable interest rates and any maturity. The Fund will generally invest in Fixed Income Securities from at least five emerging market countries,¹⁸ with no more than 20% allocated to a single country. The Fund may invest in Fixed Income Securities of any credit quality, but seeks to invest no more than 20%, at the time of investment, in Fixed Income Securities that are unrated, rated BB+

¹⁵ While the Fund is permitted to invest without restriction in corporate bonds, the Sub-Adviser expects that, under normal circumstances, the Fund will generally seek to invest in corporate bond issuances that have at least \$100,000,000 par amount outstanding. Further, component corporate bonds that in the aggregate account for at least 75% of the weight of corporate bonds will have a minimum original principal outstanding of \$100 million or more.

¹⁶ Structured securities generally include privately issued and publicly issued structured securities, including certain publicly issued structured securities that are not agency securities. The Fund may invest up to 20% of its portfolio in structured securities and junior bank loans.

¹⁷ See Amendment No. 3, supra note 8.

¹⁸ An “emerging market country” is a country that, at the time the Fund invests in the related fixed income instruments, is classified as an emerging or developing economy by any supranational organization such as the World Bank or the United Nations, or related entities, or is considered an emerging market country for purposes of constructing a major emerging market securities index. A fixed income instrument is considered to be from an emerging market country if the issuer or guarantor of the instrument is either domiciled in an emerging market country or derives a majority of its cash flow or revenue from an emerging market country.

or lower by Standard & Poor's Rating Service or Ba1 or lower by Moody's Investor Service, Inc. or the equivalent by any other nationally recognized statistical rating organization.

The Fund may purchase exchange-traded common stocks and exchange-traded preferred securities of foreign corporations. The Fund's investments in common stock of foreign corporations may also be in the form of ADRs (sponsored and unsponsored, as noted above),¹⁹ Global Depositary Receipts, and European Depositary Receipts (collectively "Depositary Receipts").

The Fund may conduct foreign currency transactions on a spot (i.e., cash) or forward basis (i.e., by entering into forward contracts to purchase or sell foreign currencies). The Fund may also invest in the following derivatives: foreign currency futures; credit default swaps;²⁰ and options, swaps, futures, and forward contracts on Fixed Income Securities. All such derivatives will be exchange traded or centrally cleared.²¹

¹⁹ The Fund may invest in sponsored or unsponsored ADRs; however, not more than 10% of the net assets of the Fund will be invested in unsponsored ADRs. All exchange-traded equity securities in which the Fund may invest will trade on markets that are members of the Intermarket Surveillance Group ("ISG") or that have entered into a comprehensive surveillance agreement with the Exchange.

²⁰ The Fund will enter into CDS agreements only with counterparties that meet certain standards of creditworthiness. The Fund will segregate assets necessary to meet any accrued payment obligations when it is the buyer of CDSs. In cases where the Fund is a seller of a CDS, if the CDS is physically settled or cash settled, the Fund will be required to segregate the full notional amount of the CDS.

²¹ The Exchange states that the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Exchange states that the Adviser believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem creation Shares at their net asset value ("NAV"), which should ensure that Shares will not trade at a material discount or premium in relation to their NAV.

B. Non-Principal Investments

While the Adviser and Sub-Adviser, under normal circumstances, will invest at least 80% of the Fund's net assets in the instruments described above, the Adviser and Sub-Adviser may invest up to 20% of the Fund's net assets in other securities and financial instruments, as described below.

The Fund may invest in U.S. Government obligations and U.S. equity securities. The Fund's investments in such U.S. equity securities may include securities traded over-the-counter ("OTC") as well as those traded on a securities exchange. The Fund may invest in convertible securities traded on an exchange or OTC.

The Fund may invest in repurchase agreements with commercial banks, brokers or dealers to generate income from its excess cash balances and to invest securities-lending cash collateral. The Fund may also enter into reverse repurchase agreements, which involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment and which have the characteristics of borrowing. The Fund's exposure to reverse repurchase agreements will be covered by securities having a value equal to or greater than such commitments. Although there is no limit on the percentage of Fund assets that can be used in connection with reverse repurchase agreements, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 10% of its net assets.

In addition to repurchase agreements, the Fund may invest in short-term instruments, including money market instruments²² and cash equivalents, and may hold cash.

²² Money market instruments are generally short-term investments that may include but are not limited to: (i) shares of money market funds (including those advised by the Adviser); (ii) obligations issued or guaranteed by the U.S. government, its agencies or

The Fund may lend its portfolio securities in an amount not to exceed 33 1/3% of the value of its total assets via a securities lending program through the Lending Agent, to brokers, dealers, and other financial institutions desiring to borrow securities to complete transactions and for other purposes. A securities lending program allows the Fund to receive a portion of the income generated by lending its securities and investing the respective collateral. The Fund will receive collateral for each loaned security that is at least equal to 102% of the market value of that security, marked to market each trading day.

The Fund may invest in Restricted Securities. Restricted Securities are securities that are not registered under the Securities Act, but which can be offered and sold to “qualified institutional buyers” under Rule 144A under the Securities Act or securities purchased after the lapse of the appropriate distribution compliance period under Regulation S under the Securities Act.

The Fund may invest in the securities of other investment companies, including affiliated funds and money market funds, subject to applicable limitations under Section 12(d)(1) of the 1940 Act.

instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (“CDs”), bankers’ acceptances, fixed time deposits and other obligations of U.S. and foreign banks (including foreign branches) and similar institutions; (iv) commercial paper rated at the date of purchase “Prime-1” by Moody’s or “A-1” by S&P, or if unrated, of comparable quality as determined by the Adviser; (v) non-convertible corporate debt securities (e.g., bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a-7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of foreign banks (including U.S. branches) that, in the opinion of the Adviser, are of comparable quality to obligations of U.S. banks that may be purchased by the Fund. Any of these instruments may be purchased on a current or a forward-settled basis.

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 Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁴ which requires, among other things, that the Exchange's rules be designed 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 Exchange Act,²⁵ which sets forth Congress' 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. Quotation and last-sale information for the Shares will be available on the facilities of the Consolidated Tape Association. The Exchange represents that the intraday, closing, and settlement prices of common stocks and other exchange-listed instruments (including Depositary Receipts, preferred securities, convertible securities, common stock, and ETPs) will be readily available from the securities exchanges trading those securities as well as from automated quotation systems, published or other public sources, or online information services. Intraday and closing price information for exchange-traded options and futures will be available from the applicable

²³ 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).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

exchange and from major market data vendors. In addition, price information for U.S. exchange-traded options will be available from the Options Price Reporting Authority.

Quotation information from brokers and dealers or pricing services will be available for Fixed Income Securities and U.S. Government obligations. Price information regarding short-term instruments, spot currency transactions, OTC-traded derivative instruments (including options, swaps, and forward currency transactions), and non-exchange-listed equity securities traded in the OTC market (including Restricted Securities, repurchase and reverse repurchase agreements, OTC equity securities, OTC-traded preferred securities, and OTC-traded convertible securities) is available from major market data vendors.

The Commission also 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. On each business day, before commencement of trading in Shares during Regular Trading Hours²⁶ on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets (the “Disclosed Portfolio”) held by the Fund that will form the basis for the Fund’s calculation of NAV at the end of the business day.²⁷ The Exchange will

²⁶ Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

²⁷ The Fund’s disclosure of derivative positions in the Disclosed Portfolio will include information that market participants can use to value these positions intraday. The Disclosed Portfolio will include, as applicable: the ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, commodity, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund’s portfolio. The website and information will be publicly available at no charge. Under accounting procedures to be followed by the Fund, trades made on the prior business day will be booked and reflected in NAV on the current business day. Accordingly, the Fund will be

obtain a representation from the issuer of the Shares that the NAV per Share 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, 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. The Custodian, through the National Securities Clearing Corporation, will make available on each business day, prior to the opening of business on the Exchange, the list of the names and the required number of shares of each Deposit Security or the required amount of Deposit Cash, as applicable, to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

The NAV of the Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on the Exchange, generally 4:00 p.m. Eastern Time (the "NAV Calculation Time") on each day that the Exchange is open for trading, based on prices at the NAV Calculation Time. The Fund's website, 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 and additional information relating to NAV and other applicable information.

The Exchange represents that trading in the Shares will be halted 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.²⁸ Trading in

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.

²⁸ These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of

the Shares also will be subject to Rule 14.11(i)(4)(B)(iv), which sets forth circumstances under which trading in the Shares may be halted.

The Exchange states that it prohibits the distribution of material non-public information by its employees. The Exchange represents that the Adviser is not registered as a broker-dealer but is affiliated with a broker-dealer and has implemented a “fire wall” with respect to that broker-dealer regarding access to information concerning the composition of and changes to the Fund’s portfolio.

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 shares in exchange-traded investment companies, U.S. equity securities, foreign equity securities, futures, and options via the ISG, from other exchanges who are members or affiliates of the ISG, or from other exchanges with which the Exchange has entered into a comprehensive surveillance sharing agreement.²⁹ 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 also made the following representations:

a fair and orderly market are present.

²⁹ For a list of the current members and affiliate members of ISG, see www.isgportal.com. The Exchange also notes that all exchange-traded instruments, including investment company securities, futures, and options will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. See Amendment No. 1, supra note 6, at 30, n.27.

- (1) 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.³⁰
- (2) All statements and representations made 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 shall constitute continued listing requirements for listing the Shares on the Exchange.³¹
- (3) The issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.³²
- (4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.³³
- (5) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and these 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.³⁴

³⁰ See Amendment No. 1, supra note 6, at 28.

³¹ See Amendment No. 2, supra note 7, at 3.

³² Id. at 4.

³³ See Amendment No. 1, supra note 6, at 29.

³⁴ Id. at 29–30.

- (6) 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 the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (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.³⁵
- (7) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Act.³⁶
- (8) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.³⁷
- (9) The Fund will enter into CDS agreements only with counterparties that meet certain standards of creditworthiness.³⁸

³⁵ Id. at 30–31.

³⁶ Id. at 28. See also 17 CFR 240.10A-3.

³⁷ See Amendment No. 1, supra note 6, at 28.

³⁸ Id. at 12.

- (10) The Fund may invest up to 20% of its portfolio in structured securities and junior bank loans in the aggregate.³⁹
- (11) Under normal circumstances, the Fund will generally seek to invest in corporate bond issuances that have at least \$100,000,000 par amount outstanding. Further, component corporate bonds that in the aggregate account for at least 75% of the weight of corporate bonds will have a minimum original principal outstanding of \$100 million or more.⁴⁰
- (12) The Fund may invest in sponsored or unsponsored ADRs; however, not more than 10% of the net assets of the Fund will be invested in unsponsored ADRs.⁴¹
- (13) All exchange-traded instruments, including investment company securities, futures, and options will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴²

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendments No. 1, No. 2, and No. 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, No. 2, and No. 3, is consistent with Section 6(b)(5) of the Act⁴³ and the rules and regulations thereunder applicable to a national securities exchange.

³⁹ Id. at 9.

⁴⁰ Id.

⁴¹ Id. at 11.

⁴² Id. at 30, n.27.

⁴³ 15 U.S.C. 78f(b)(5).

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BATS-2015-94 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-2015-94. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not

edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BATS-2015-94 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change As Modified by Amendment Nos. 1, 2, and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, No. 2, and No. 3, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. The Exchange submitted Amendment No. 1 to, among other things, provide clarifying details about the investments the Fund would be permitted to hold; to further limit the percentage of the Fund's portfolio that may be composed of structured securities and junior bank loans; to limit the potential risk associated with derivative transactions; and to represent that the Adviser believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the Fund's use of derivatives. This information aided the Commission in evaluating the likelihood that market participants may engage in effective arbitrage. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁴ to approve the proposed rule change, as modified by Amendment No. 1, No. 2, and No. 3, on an accelerated basis.

⁴⁴ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR-BATS-2015-94), as modified by Amendment No. 1, No. 2, and No. 3, is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Robert W. Errett
Deputy Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

