Form 18–K (17 CFR 249.318) is an annual report form used by foreign governments or political subdivisions of foreign governments with securities listed on a United States exchange. The information to be collected is intended to ensure the adequacy and public availability of information available to investors. The information provided is mandatory. Form 18–K is a public document. We estimate that Form 18–K takes approximately 8 hours to prepare and is filed by approximately 35 respondents for a total annual reporting burden of 280 hours (8 hours per response × 35 responses).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: Shagufta.Ahmed@omb.eop.gov; and (ii) Pamela Dyson, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 20, 2016.
Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 3; To List and Trade Shares of the Pointbreak Diversified Commodity Strategy Fund of the Pointbreak ETF Trust Under BATS Rule 14.11(i), Managed Fund Shares

June 20, 2016.

I. Introduction

On March 7, 2016, 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 ("Exchange Act")1 and Rule 19b–4 thereunder,2 a proposed rule change to list and trade shares ("Shares") of the Pointbreak Diversified Commodity Strategy Fund ("Fund") of the Pointbreak ETF Trust ("Trust") under BATS Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on March 22, 2016.3 On April 8, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, and on April 14, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.4 On May 5, 2016, pursuant to Section 19(b)(2) of the Act,5 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.6 On June 17, 2016, the Exchange filed Amendment No. 3 to the proposed rule change.7 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 3.

II. The Exchange’s Description of the Proposal

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 listed by the Trust. According to the Exchange, the Trust is registered with the Commission as an open-end investment company.8 Pointbreak Advisers LLC will be the investment adviser ("Adviser")9 to the Fund.10 Brown Brothers Harriman & Co. will be the administrator, custodian, and transfer agent for the Trust and ALPS Distributors, Inc. will serve as the distributor for the Trust.11

designated June 20, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

In Amendment No. 3, the Exchange provided additional information regarding the creation and redemption process, and made certain technical amendments. Amendment No. 3 is available at https://www.sec.gov/rules/sro/bats.html. Because Amendment No. 3 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.8 The Exchange states that the Trust has filed a registration statement on behalf of the Fund with the Commission. See Registration Statement on Form N–1A for the Trust, dated December 23, 2015 (File No. 811–22551) ("Registration Statement"). 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. 32064 (April 4, 2016) (File No. 812–14577).

The Exchange states that prior to listing on the Exchange, the Adviser will be registered as a Commodity Pool Operator and will become a member of the National Futures Association ("NFA"), and that the Fund and its Subsidiary will be subject to regulation by the Commodity Futures Trading Commission and NFA and additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

The Exchange states that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. 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, such adviser or sub-adviser will implement a firewall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of 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 the portfolio.

11 Additional information regarding the Trust, the Fund, and the Shares, including investment...
A. The Fund’s Investments

According to the Exchange, the Fund is an actively managed exchange-traded fund (“ETF”) that seeks to provide total return that exceeds that of the Solactive Diversified Commodity Index (“Benchmark”) over time. The Fund is not an index tracking ETF and is not required to invest in the specific components of the Benchmark, and the Fund can have a higher or lower exposure to any component within the Benchmark at any time and may invest in other commodity-linked instruments as well. However, the Exchange represents that the Fund will generally seek to maintain a portfolio of instruments similar to those included in the Benchmark and will seek exposure to commodities included in the Benchmark. The Benchmark is a rules-based index composed of future contracts on the following 16 commodities: Aluminum, Brent crude oil, cocoa, copper, corn, gold, heating oil, live cattle, natural gas, Reformulated Gasoline Blendstock for Oxygen Blending gasoline, silver, soybeans, sugar #11, wheat, WTI light crude oil, and zinc. The Exchange states that the Benchmark will seek to select the contract month for each specific commodity over the next 13 months that display the most backwardation or the least contango and will not attempt to always own those contracts that are closest to expiration.

According to the Exchange, under normal circumstances, the Fund will invest in Commodity Futures (as defined below) both directly through the Subsidiary and Cash Instruments (as defined below) through the Subsidiary. Commodity Futures include only exchange-traded futures on commodities and exchange-traded futures contracts on commodity indices. Cash Instruments include only: (i) Short-term obligations issued by the U.S. Government; (ii) cash and cash-like instruments; (iii) money market mutual funds; and (iv) repurchase agreements. Cash Instruments would provide liquidity, serve as margin, or collateralize the Subsidiary’s investments in Commodity Futures. The Fund will not invest in Cash Instruments that are below investment-grade.

The Exchange states that the Fund generally will not invest directly in Commodity Futures and expects to gain exposure to Commodity Futures by investing a portion of its assets in the Subsidiary. The Fund’s investment in the Subsidiary is intended to provide the Fund with exposure to commodity markets in accordance with applicable rules and regulations. The Subsidiary has the same investment objective and investment restrictions as the Fund. The Fund will generally invest up to 25% of its total assets in the Subsidiary.

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

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

B. The Fund’s Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order, in the view of the Adviser, to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Aside from the Fund’s investments in the Subsidiary, the Fund will not invest in non-U.S. equity securities. Neither the Fund nor the Subsidiary will invest in derivatives other than Commodity Futures.

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.

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.

In particular, the Commission finds that...
the proposed rule change, as modified by Amendment Nos. 1, 2, and 3, is consistent with Section 6(b)(5) of the Exchange Act, 19 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 Exchange Act, 20 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. Also, daily trading volume information for the Fund will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites. Additionally, information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers’ computer screens and other electronic services.

In addition, the Intraday Indicative Value 21, (as defined in BATS Rule 14.11(i)(3)(C)) 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. 22 On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio (as defined in BATS Rule 14.11(i)(3)(B)) 23 that will form the basis for the Fund’s calculation of NAV at the end of the business day. 24 The Web site for the Fund will also include a form of the prospectus for the Fund and additional data relating to NAV and other applicable informative information.

Intraday price quotations on Cash Instruments of the type held by the Fund, with the exception of money market mutual 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. For Commodity Futures, such intraday pricing information is available directly from the applicable listing exchange. Price information for money market mutual funds will be available from the applicable investment company’s Web site.

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 the Fund may be halted. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the Commodity Futures and other assets composing the Disclosed Portfolio of the Fund; (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. 25 The Exchange represents that it prohibits the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer, and that 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, such adviser or sub-adviser 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 of 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. 26

Prior to the commencement of trading, the Exchange will inform its

21 According to the Exchange, the Intraday Indicative Value will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The Exchange states that 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 Exchange’s Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

22 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.

23 The Disclosed Portfolio will include for each portfolio holding, as applicable: Ticker symbol or other identifier, 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.

24 The NAV of the Fund will generally be determined at 4:00 p.m. Eastern Time each business day when the Exchange is open for trading. The Fund intends to require all creation and redemption requests to be received no later than 10:30 a.m. Eastern Time (“cutoff time”) in order to create or redeem Shares based on that day’s NAV. In support of this early cutoff time, the Exchange represents that the early cutoff time will provide the Fund with certainty as to whether to buy or sell certain Commodity Futures in advance of their settlement times, which should help to minimize the difference between the price used to calculate the NAV and the price at which the Fund is able to buy or sell the Commodity Futures. The Exchange also represents that the early cutoff time will provide authorized participants and market makers with certainty regarding the prices that will be used for calculating the NAV and that they will be able to transact at those prices, which should assist authorized participants and market makers to efficiently hedge their positions. Moreover, the Exchange represents that the early cutoff time should not significantly interfere with the arbitrage mechanism because authorized participants and market makers will continue to be able to hedge their positions in the Fund by investing directly in Commodity Futures as trading in these Commodity Futures continues after the settlement time. Finally, the Exchange represents that although the authorized participants and market makers that accumulate positions after the cutoff time may take on some risk or additional cost they have been able to hold part or all of their positions overnight, the risk or additional costs do not generally interfere with the arbitrage mechanism. See Amendment No. 4, supra note 7.

26 The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.
members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange represents that 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.

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 forth 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) The Exchange may obtain information regarding trading in the Shares and the underlying futures, including futures contracts held by the Subsidiary, via the Intermarket Surveillance Group (“ISG”) from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive 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.

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

(5) 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 are 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.

(6) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Exchange Act.27

(7) Aside from the Fund’s investments in the Subsidiary, neither the Fund nor the Subsidiary will invest in non-U.S. equity securities.

(8) Neither the Fund nor the Subsidiary will invest in derivatives other than Commodity Futures.

(9) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund’s net assets are held in illiquid assets.

(10) 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.

(11) A minimum of 100,000 Shares 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 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.

This approval order is based on all of the Exchange’s representations, including those set forth above and in Amendment Nos. 1, 2, and 3. The Commission notes that the Fund 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 3, is consistent with Section 6(b)(5) of the Exchange Act and Section 11A(a)(1)(C)(iii) of the Exchange Act 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 Exchange Act,30 that the proposed rule change (SR–BATS–2016–16), as modified by Amendment Nos. 1, 2, and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.31

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016–14928 Filed 6–23–16; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. SIPA–177; File No. SIPC–2016–02]

Securities Investor Protection Corporation; Notice of Filing of Proposed Bylaw Amendments Relating to Assessment of SIPC Members

June 15, 2016.

Correction

In notice document 2016–14499, appearing on pages 39986 through 39990 in the issue of Monday, June 20, 2016, make the following corrections:


2. On page 39989, in the third column, in the fifth paragraph, on the


