III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

- Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2012–092 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2012–092. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–092 and should be submitted on or before August 29, 2012.

For the Commission, by delegation, Kevin M. O’Neill, Deputy Secretary.

[FR Doc. 2012–19362 Filed 8–7–12; 8:45 am]

BILLING CODE 8011–01–P
The person is classified as a “Professional Subscriber.”

Under OPRA’s current definition, to qualify as a “Nonprofessional,” a person must not be “a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, member of a securities exchange or association or futures contract market, or an owner, partner, or associated person of any of the foregoing.”7 8 For persons employed by securities broker-dealers, OPRA has interpreted the term “associated person” by reference to the definition of the term “associated person of a broker or dealer” in Section 3(a)(18) of the Act.8 According to OPRA, that definition includes “any employee” of a broker or dealer, and accordingly employees of broker-dealers have not been eligible to be treated as Nonprofessionals.

According to OPRA, two inconsistencies result from this language. First, OPRA’s language on this point differs from the definition of “Nonprofessional” used by the Consolidated Tape Association (“CTA”) and the “Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quote and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis” (“Nasdaq/UTP Plan”). The CTA and the Nasdaq/UTP Plan define the term “Nonprofessional” substantially identically, and by reference to whether the person seeking to qualify as a Nonprofessional is required to register in some capacity, not by reference to whether the person is an associated person of an entity or person that is required to register in some capacity.9 Second, because the definition of the term “associated person” is defined differently in the commodity futures industry, a person who is employed by a commodity futures merchant (subject to regulation under the Commodity Exchange Act) may be able to qualify as a Nonprofessional under the language of the current OPRA definition even though a person who is employed by a securities broker to perform identical functions cannot.10

In order to eliminate these inconsistencies, OPRA proposes to replace paragraphs 1(c) and 1(d) of each Addendum for Nonprofessionals with a new paragraph 1(c) that tracks the language used by the CTA and the UTP/Nasdaq Plan. The revised definition would allow a person who is not himself or herself registered in some capacity with the Commission or the CFTC, but who is employed by an entity that is so registered, to qualify as a “Nonprofessional” for purposes of the person’s personal, non-business-related, investment activities. According to OPRA, the changes that it is proposing in its definition of the term “Nonprofessional” will add clarity to the definition and more closely align the OPRA Plan definition with the definitions used by the CTA and the UTP/Nasdaq Plan.11

III. Discussion

After careful review, the Commission finds that the proposed OPRA Plan amendment is consistent with the requirements of the Act and the rules and regulations thereunder.12 Specifically, the Commission finds that the proposed OPRA Plan amendment is consistent with Section 11A of the Act13 and Rule 608 thereunder14 in that it is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, and to remove impediments to, and perfect the mechanism of, a national market system. The Commission notes that OPRA’s proposed changes to the definition of the term “Nonprofessional” are designed to add clarity to the definition and eliminate any inconsistencies between OPRA’s definition and the definitions used by the CTA and the UTP/Nasdaq Plan. The revised language would allow a person

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1. See Addenda, ¶ 6(c), supra note 5.
2. Section 3(a)(18) of the Act provides as follows: “The term ‘person associated with a broker or dealer’ or ‘associated person of a broker or dealer’ means any partner, officer, director, or branch manager of such broker or dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such broker or dealer, or any employee of such broker or dealer, except that any person associated with a broker or dealer whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of section 6(b) (of this title) (other than paragraph (6) thereof).” (Emphasis added.)
4. For OPRA’s current definition of the term “Nonprofessional” see supra note 5.
5. OPRA’s current definition of the term “Nonprofessional” is set out in an “Addendum for Nonprofessionals” that is attached to its Electronic Form of Subscriber Agreement and its Hardcopy Form of Subscriber Agreement (collectively, “Addendum”). The two forms, in turn, are “Addendum” attachments B–1 and B–2 to OPRA’s form of Vendor Agreement. See www.operators.com.
6. OPRA defines a “Subscriber,” in general, as an entity or person that receives OPRA Data for the person’s own use.
who is not registered in some capacity with the Commission or the CFTC, but who is employed by an entity that is required to so register to qualify as a “Nonprofessional” and therefore gain access to OPRA data at a potentially reduced cost. Accordingly, the Commission believes that the proposal may increase certain market participant’s ability to access OPRA data on a timely basis. Therefore, the Commission believes that OPRA’s proposal is consistent with Section 11A of the Act and Rule 608 thereunder.19

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act,17 and Rule 608 hereunder,18 that the proposed OPRA Plan amendment (SR–OPRA–2012–03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.19

Kevin M. O’Neill, Deputy Secretary.

[FR Doc. 2012–19416 Filed 8–7–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the iShares Ultrashort Duration Bond Fund

August 2, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (‘‘Act’’) and Rule 19b–4 thereunder, notice is hereby given that, on July 27, 2012, BATS Exchange, Inc. (‘‘Exchange’’ or ‘‘BATS’’) filed with the Securities and Exchange Commission (‘‘Commission’’) the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to list and trade shares of the iShares Ultrashort Duration Bond Fund (‘‘Fund’’) of the iShares U.S. ETF Trust (‘‘Trust’’) under BATS Rule 14.11(i) (‘‘Managed Fund Shares’’). The shares of the Fund are collectively referred to herein as the ‘‘Shares.’’ The text of the proposed rule addition is available at the Exchange’s Web site at http://www.batstrading.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.3 The Fund will be an actively managed ETF. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on June 21, 2011. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N–1A (‘‘Registration Statement’’) with the Commission.4

BlackRock Fund Advisors is the investment adviser (‘‘BFA’’ or ‘‘Adviser’’) to the Fund.5 BlackRock Financial Management, Inc. serves as sub-adviser for the Fund (‘‘Sub-Adviser’’).6 State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. BlackRock Investments, LLC (‘‘Distributor’’) serves as the distributor for the Trust.

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

3 See Registration Statement on Form N–1A for the Trust, dated March 5, 2012 (File Nos. 333–179904 and 811–22649).

4 BlackRock Fund Advisors is an indirect wholly owned subsidiary of BlackRock, Inc.

5 The Adviser manages the Fund’s investments and its business operations subject to the oversight of the Board of Trustees of the Trust (‘‘Board’’). While BFA is ultimately responsible for the management of the Fund, it is able to draw upon the trading, research, and expertise of its asset management affiliates for portfolio decisions and management with respect to portfolio securities. The Adviser also has ongoing oversight responsibility. The Sub-Adviser, subject to the supervision and oversight of the Adviser and the Board, is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings.

7 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 Sub-Adviser and their 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

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