



August 6, 2018

Brent J. Fields  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: File No. SR-CboeBZX-2017-005, Amendment No. 2

Dear Mr. Fields:

On August 6, 2018, Cboe BZX Exchange, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) Amendment No. 2 to SR-CboeBZX-2017-005 in order to clarify certain points and add additional details. Amendment No. 2 to SR-CboeBZX-2017-005 amends and replaces in its entirety Amendment No. 1 to the proposal, which was submitted on April 13, 2018 and amended and replaced in its entirety the proposal as originally submitted on November 21, 2017. The Exchange submitted proposal SR-CboeBZX-2017-005 in order to list and trade shares of the Cboe Vest S&P 500 Buffer Protect Strategy ETFs, each a series of the ETF Series Solutions Trust. In order to provide notice for public review of this Amendment No. 2, in addition to posting on the Exchange’s public website, the Exchange is filing this comment letter with the Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kyle Murray', with a large, stylized flourish at the end.

Kyle Murray  
Assistant General Counsel

*Required fields are shown with yellow backgrounds and asterisks.*

Filing by Cboe BZX Exchange, Inc.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial *</b>	<b>Amendment *</b>	<b>Withdrawal</b>	<b>Section 19(b)(2) *</b>	<b>Section 19(b)(3)(A) *</b>	<b>Section 19(b)(3)(B) *</b>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			Rule		
<b>Pilot</b>	<b>Extension of Time Period for Commission Action *</b>	<b>Date Expires *</b>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

<b>Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010</b>	<b>Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934</b>
<b>Section 806(e)(1) *</b>	<b>Section 806(e)(2) *</b>
<input type="checkbox"/>	<input type="checkbox"/>
<b>Section 3C(b)(2) *</b>	
<input type="checkbox"/>	

<b>Exhibit 2 Sent As Paper Document</b>	<b>Exhibit 3 Sent As Paper Document</b>
<input type="checkbox"/>	<input type="checkbox"/>

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date

By

(Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) (formerly known as Bats BZX Exchange, Inc.) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to list and trade shares of a series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF under the ETF Series Solutions Trust (the “Trust”), under Rule 14.11(c)(3) (“Index Fund Shares”).

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on July 26, 2018.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel and Corporate Secretary, (312)786-7467, or Kyle Murray, Assistant General Counsel, (913)815-7121.

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

(a) Purpose

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

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

This Amendment No. 2 to SR-CboeBZX-2017-005 amends and replaces in its entirety Amendment No. 1 to the proposal, which was submitted on April 13, 2018. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details about the Fund.

The Exchange proposes to list and trade shares (“Shares”) of each series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF (each a “Fund” and, collectively, the “Funds”) under Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares based on equity securities indexes on the Exchange. In total, the Exchange is proposing to list and trade Shares of twelve monthly series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF.<sup>3</sup> Each Fund will be an index-based exchange traded fund (“ETF”). The Funds will be the following: Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (January) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (February) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (March) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (April) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (May) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (June) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (July) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (August) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (September) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (October) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (November) ETF; and Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (December) ETF.

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<sup>3</sup> The Commission has not yet issued an order(s) granting exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) applicable to the activities of the Funds and the Funds will not be listed on the Exchange until such an order(s) is issued and any conditions contained therein are satisfied. To the extent that any information in this proposal is or becomes inaccurate, the Exchange will submit a proposed rule change to reflect any new information before the Funds will be listed on the Exchange.

Each Fund will be based on the Cboe S&P 500 Buffer Protect Index (Month) Series, where “Month” is the corresponding month associated with the roll date of the applicable Fund (each an “Index” and, collectively, the “Indexes”).

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. 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>4</sup> The Funds’ adviser, Cboe Vest Financial, LLC (the “Adviser”), and index provider, Cboe Exchange, Inc. (“Cboe Options” or the “Index Provider”), are not registered as broker-dealers, but are affiliated with a broker-dealer. The Index Provider has implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the Indexes. In addition, Index Provider personnel who make decisions regarding the Index composition or methodology are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Index, pursuant to Rule 14.11(c)(3)(B)(iii). The Adviser has also implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the portfolio. In addition, Adviser personnel who make decisions regarding a Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information

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<sup>4</sup> See Registration Statement on Form N-1A for the Trust, dated October 24, 2017 (File Nos. 333-179562 and 811-22668). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

regarding a Fund's portfolio. In the event that (a) the Adviser or Index Provider becomes registered as a broker-dealer or newly affiliated with another 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 and maintain 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.

The Exchange also notes that the Adviser is a BZX Affiliate as defined in Rule 14.3(e)(1)(A),<sup>5</sup> but the Shares of the Funds are not Affiliate Securities, as defined in Rule 14.11(e)(1)(B),<sup>6</sup> and are therefore not subject to the additional requirements applicable to Affiliate Securities because such definition explicitly excludes Index Fund Shares. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index. The value of each Index is calculated daily by Cboe

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<sup>5</sup> As defined in Rule 14.3(e)(1)(A), the term "BZX Affiliate" means the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where "control" means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

<sup>6</sup> As defined in Rule 14.3(e)(1)(B), the term "Affiliate Security" means any security issued by a BZX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c).

Options utilizing an option valuation model. The Exchange is submitting this proposed rule change because the Indexes for the Funds do not meet the listing requirements of Rule 14.11(c)(3), which requires, among other things, that all securities in the index or portfolio be U.S. Component Stocks<sup>7</sup> listed on the Exchange or another national securities exchange and be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. As further described below, the Indexes consist of options on an index of U.S. Component Stocks. Because the Indexes consist of options (based on an index of U.S. Component Stocks (the S&P 500 Index)), which are not NMS Stocks as defined in Rule 600 of Regulation NMS under the Act, and Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the index or portfolio shall be NMS Stocks, it does not meet the criteria set forth in Rule 14.11(c)(3). As such, the Exchange submits this proposal to list the Shares on the Exchange.

Cboe Vest S&P 500<sup>®</sup> Buffer Protect Index

Each Index is a rules-based options index that consists exclusively of FLEXible EXchange Options on the S&P 500 Index (“FLEX Options”) listed on Cboe Options.<sup>8</sup> The Indexes are designed to provide exposure to the large capitalization U.S. equity market with lower volatility and downside risks than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year.

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<sup>7</sup> As defined in Rule 14.11(c)(1)(D), the term “U.S. Component Stock” shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

<sup>8</sup> More information about the Indexes and methodology is available on the Index Provider’s website at [www.cboe.com](http://www.cboe.com).

On a specified day of the applicable month for each Index (the “Roll Date”),<sup>9</sup> the applicable Index implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, if held to such Roll Date, seeks to “buffer protect” against the first 10% decline in the value of the S&P 500 Index, while providing participation up to a maximum capped gain in the value of the S&P 500 Index (the “Capped Level”). The Capped Level is calculated as of each Roll Date based on the prices of the applicable FLEX Options, such that the value of the portfolio of FLEX Options that comprises each Index is equivalent to the value of a portfolio comprised of the S&P 500 Index constituents. As of the 2017 Roll Date, the Capped Level for the January Index was 11%, meaning that the January Index is designed to provide participation up to a maximum 11% gain in the value of the S&P 500 Index from the 2017 Roll Date to the 2018 Roll Date, but to not provide any participation for gains in the S&P 500 Index in excess of 11%.

Each Index is designed to provide the following outcomes between Roll Dates:

- If the S&P 500 Index declines more than 10%: the Index declines 10% less than the S&P 500 Index (e.g., if the S&P 500 Index returns -35%, the Index is designed to return -25%);
- If the S&P 500 Index declines between 0% and 10%: the Index provides a total return of zero (0%);

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<sup>9</sup> As described above, each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Buffer Protect Index January Series is in January and the Roll Date for the Cboe® S&P 500® Buffer Protect Index February Series is in February, a pattern which continues through the rest of the calendar year.

- If the S&P 500 Index appreciates between 0% and the Capped Level: the Index appreciates the same amount as the S&P 500 Index; and
- If the S&P 500 Index appreciates more than the Capped Level: the Index appreciates by the amount of the Capped Level.

Each Index includes a mix of purchased and written (sold) put and call FLEX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation model.

#### Fund Holdings

Under Normal Market Conditions,<sup>10</sup> each Fund will seek to track the total return performance, before fees and expenses, of its respective Index. Under Normal Market Conditions, each Fund will invest all, or substantially all, of its assets in a combination of some or all of the following: the FLEX Options that make up each respective underlying Index,<sup>11</sup> standardized U.S. exchange-listed options contracts on the S&P 500 Index (“Standardized S&P 500 Index Options” and, collectively with FLEX Options, “S&P 500

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<sup>10</sup> The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

<sup>11</sup> For the reasons outlined in footnote 15 below, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.

Index Options”),<sup>12</sup> and U.S. exchange-listed options on one or more ETFs<sup>13</sup> that track the performance of the S&P 500 Index and have the same economic characteristics as the FLEX Options that make up each Index (“Comparable ETF Options”).<sup>14,15</sup> The Fund may also hold cash and cash equivalents.<sup>16</sup> Under Normal Market Conditions, at least 80% of

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<sup>12</sup> For the reasons outlined in footnote 15 below, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.

<sup>13</sup> For purposes of this proposal, the term ETF means Portfolio Depositary Receipts and Index Fund Shares as defined in Rule 14.11(b) and 14.11(c), respectively, and their equivalents on other national securities exchanges.

<sup>14</sup> The term “Comparable ETF Options” will at any time include only the five ETFs based on the S&P 500 Index with the greatest options consolidated average daily exchange trading volume for the previous quarter. The Adviser expects that, to the extent that the Funds use Comparable ETF Options, such options contracts will primarily consist of options on the SPDR S&P 500 ETF (ticker: SPY).

<sup>15</sup> Because of certain potential limitations of the Investment Company Act of 1940 associated with trading options on Cboe Exchange, Inc. and any other exchanges owned or controlled by Cboe Global Markets, Inc. (collectively, with Cboe Exchange, Inc., “Cboe Exchanges”), the Exchange will not list and trade the Shares of the Funds on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. This restriction shall not prevent the Adviser or the Funds from engaging in other transactions or receiving other services from Cboe Exchanges or for which Cboe Exchanges may receive a benefit, such as pricing services, provided such transactions and/or the receipt of such services is consistent with applicable statutes, rules, regulations, and interpretive positions of the Commission and its staff..

<sup>16</sup> For purposes of this filing, cash equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and

each Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the FLEX Options that make up the Index. The Funds will hold only FLEX Options, Standardized S&P 500 Index Options, Comparable ETF Options, and cash and cash equivalents. The FLEX Options owned by each Fund will have the same terms (i.e. same strike price and expiration) for all investors of that Fund within an outcome period. The outcome period for each of the Funds is one year and all of the outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. The Capped Level is determined with respect to the applicable Index on the inception date of the applicable Fund and at the beginning of each outcome period.

#### FLEX Options<sup>17</sup>

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loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

<sup>17</sup> As noted above, because of certain potential limitations of the Investment Company Act of 1940 associated with trading options on Cboe Exchange, Inc. and any other exchanges owned or controlled by Cboe Global Markets, Inc. (collectively, with Cboe Exchange, Inc., "Cboe Exchanges"), the Exchange will not list and trade the Shares of the Funds on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. This restriction shall not prevent the Adviser or the Funds from engaging in other transactions or receiving other services from Cboe Exchanges or for which Cboe Exchanges may receive a benefit, such as pricing services, provided such transactions and/or the receipt of such services is consistent with applicable statutes, rules, regulations, and interpretive positions of the Commission and its staff. As such, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. Similarly, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.

The market for S&P 500 Index Options traded on Cboe Options is among the most liquid markets in the world. FLEX Options are a subset of S&P 500 Index Options traded on Cboe Options.<sup>18</sup> In 2017, more than 1.16 million options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than \$250 billion in notional volume traded on a daily basis. While FLEX Options are traded differently than traditional options contracts, the Exchange believes that the liquidity and arbitrage opportunities of the S&P 500 Index bolsters the market for FLEX Options, as described below.

Every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery. The process begins with a request for quote (“RFQ”) in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications—underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of Cboe Options which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by Cboe Options.

#### Additional Discussion

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<sup>18</sup> See <https://www.theocc.com/webapps/flex-reports>. Unless otherwise noted, all statistics provided herein are based on information from the Options Clearing Corporation (“OCC”).

The Exchange believes that sufficient protections are in place to protect against market manipulation of each Fund's Index and Shares, S&P 500 Index Options, and Comparable ETF Options for several reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index help prevent manipulation of the S&P 500 Index and, thus, mitigate risk associated with manipulation in the FLEX Options that comprise the underlying Indexes, along with the Standardized S&P 500 Index Options and Comparable ETF Options that the Funds may hold;<sup>19</sup> (ii) the competitive quoting process for FLEX Options;<sup>20</sup> (iii) the significant liquidity in the market for Standardized S&P 500 Index Options results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and the Financial Industry Regulatory Authority ("FINRA") designed to detect violations of the federal securities laws and self-regulatory organization ("SRO") rules.

Trading in the Shares and the underlying investments will be subject to the federal securities laws and Exchange, Cboe Options, FINRA, and, with respect to the

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<sup>19</sup> The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

<sup>20</sup> Intraday quotations and last sale information for FLEX Options are available directly from Cboe Options or through the Options Price Reporting Authority. Additionally, information about existing outstanding interest in FLEX Options is available on the OCC's website.

Comparable ETF Options, other U.S. options exchanges' rules and surveillance programs.<sup>21</sup>

The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which may be comprised primarily of FLEX Options, will be acquired in extremely liquid and highly regulated markets,<sup>22</sup> the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. All statements and representations made in this filing regarding (a) the description of the

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<sup>21</sup> The Exchange notes that Cboe Options is a member of the Option Price Regulatory Surveillance Authority, which was established in 2006, to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges. For more information, see <http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx>.

<sup>22</sup> All exchange-listed options contracts that the Funds may hold will trade on a market that is a member of the Intermarket Surveillance Group ("ISG") and the Funds will not hold any non-exchange-listed options contracts, however, not all of the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

portfolios, reference assets, and Indexes, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of indexes, reference assets, and intraday indicative values, or (d) the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares 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 or Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). Finally, the Exchange

also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, S&P 500 Index Options are collectively among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. Similarly, Comparable ETF Options will include only the five most heavily traded options on an ETF based on the S&P 500 Index,<sup>23</sup> which will mitigate the susceptibility to manipulation in such options contracts, and the highly regulated options markets and the broad base and scope of the S&P 500 Index underlying such ETFs make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. As described above, the Exchange also believes that the liquidity of the markets for S&P 500 Index securities, S&P 500 Index Options, including FLEX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with both the value of the Index underlying each Fund and the price of a Fund's Shares. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled

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<sup>23</sup> See supra note 14.

with the surveillance programs described above, the Exchange does not believe that trading in a Fund's Shares would present manipulation concerns. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).<sup>24</sup> Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e. 2x or -2x) of its respective Index. Each Fund's use of derivative instruments will be collateralized.

The Exchange represents that, except as described above, each Fund will meet each of the initial and continued listing criteria in BZX Rule 14.11(c)(3) with the exception of meeting the requirements of Rule 14.11(c)(3)(A)(i), applicable to the listing of Index Fund Shares based upon an index of "U.S. Component Stocks." The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of each Fund will comply with all other requirements applicable to Index Fund Shares, which includes requirements relating to the dissemination of key

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<sup>24</sup> The Funds will each include appropriate risk disclosure in their offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

information such as the index value,<sup>25</sup> the net asset value, and the intraday indicative value, rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider and Adviser, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

Quotation and last sale information for exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-listed options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Treasury bills and other cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. On each business day, before commencement of trading in the Shares on the Exchange during Regular Trading Hours, the portfolio that will form the basis for each Fund's calculation of the net asset value at the end of the business day will be provided on the Advisor's website at [www.cboeinvest.com](http://www.cboeinvest.com).

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<sup>25</sup> Rule 14.11(c)(3)(B)(ii) requires that the index value must be disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that if the index value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated index value must remain available throughout the Exchange's trading hours. The value of the Indexes will not change during the period when trading is occurring on the Exchange and the last official calculated index value will remain available throughout the Exchange's trading hours.

The issuer represents that it will provide and maintain a publicly available web tool for each of the Funds on its website that will provide existing and prospective shareholders with important information to help inform investment decisions. The information provided will include the start and end dates of the current outcome period, the time remaining in the outcome period, the Fund's current net asset value, the Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value. For each of the Funds, the web tool will also provide information regarding each Fund's buffer. This information will include the remaining buffer available for a shareholder purchasing Shares at the current net asset value or the amount of losses that a shareholder purchasing Shares at the current net asset value would incur before benefitting from the protection of the buffer. The cover of each Fund's prospectus, as well as the disclosure contained in "Principal Investment Strategies," provides the specific web address for each Fund's web tool.

#### Suitability

Currently, Rule 3.7(a) provides that a Member, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer, after reasonable inquiry by the Member, as to the customer's other securities holdings and as to the customer's financial situation and needs. Interpretation and Policy .01 to Rule 3.7 provides that no Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks

of the recommended transaction and is financially able to bear the risks of the recommended position.

Prior to the commencement of trading, the Exchange will inform its Members of the suitability requirements of Rule 3.7 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares.

b. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>26</sup> in general and Section 6(b)(5) of the Act<sup>27</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating

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<sup>26</sup> 15 U.S.C. 78f.

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

transactions in securities, 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 in that the Shares of the Funds would meet each of the initial and continued listing criteria required by BZX Rule 14.11(c)(3), except that because the Indexes consist of options on an index of U.S. Component Stocks and Rule 14.11(c)(3)(A)(i) applies only to U.S. Component Stocks (that is, the rule provides criteria for an index composed of equity securities and not for an index that is composed of options on an index of equity securities), the Indexes do not meet the criteria set forth in Rule 14.11(c)(3)(A)(i)(e).<sup>28</sup> The Exchange believes that the concerns that Rule 14.11(c)(3)(A)(i) is intended to address are mitigated as it relates to each Fund's Index by: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index which help prevent manipulation of the S&P 500 Index and, thus, mitigate risk associated with manipulation in the FLEX Options that comprise the underlying Indexes, along with the Standardized S&P 500 Index Options and Comparable ETF Options that the Funds may hold;<sup>29</sup> (ii) the competitive quoting process for FLEX Options;<sup>30</sup> (iii) the

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<sup>28</sup> Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Funds and the Indexes meet all of the requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3), except the requirements in Rule 14.11(c)(3)(A)(i)(a)-(e), as the Index consists of options on the S&P 500 Index. The S&P 500 Index consists of U.S. Component Stocks and satisfies the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e).

<sup>29</sup> The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

significant liquidity in the market for Standardized S&P 500 Index Options, which results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio will be acquired in extremely liquid and highly regulated markets, the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolios, reference assets, and Indexes, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of indexes, reference assets, and intraday indicative values, or (d) the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange. The

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<sup>30</sup> Intraday quotations and last sale information for FLEX Options are available directly from Cboe Options or through the Options Price Reporting Authority. Additionally, information about existing outstanding interest in FLEX Options is available on the OCC's website.

issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares 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 or Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, S&P 500 Index Options are collectively among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade

in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. Similarly, Comparable ETF Options will include only the five most heavily traded options on an ETF based on the S&P 500 Index,<sup>31</sup> which will mitigate the susceptibility to manipulation in such options contracts, and the highly regulated options markets and the broad base and scope of the S&P 500 Index underlying such ETFs make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange also believes that the liquidity of the markets for S&P 500 Index securities, S&P 500 Index Options, including FLEX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with both the value of the Index underlying each Fund and the price of a Fund's Shares. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the surveillance programs described above, the Exchange does not believe that trading in a Fund's Shares would present manipulation concerns. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments

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<sup>31</sup> See supra note 14.

may result in leverage).<sup>32</sup> Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e. 2x or -2x) of its respective Index. Each Fund's use of derivative instruments will be collateralized.

The Exchange represents that, except as it relates to the options portion of the Indexes described above, the Funds will meet and be subject to all other requirements of Rule 14.11(c)(3) related to generic listing standards of the Indexes and other applicable requirements for such a series of Index Fund Shares under Rule 14.11(c) on an initial and continued listing basis, including those requirements regarding the dissemination of key information such as the index value, net asset value, and the intraday indicative value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, suitability, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules. The Trust is required to comply with Rule 10A-3<sup>33</sup> under the Act for the initial and continued listing of the Shares of the Funds. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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<sup>32</sup> The Funds will each include appropriate risk disclosure in their offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

<sup>33</sup> See 17 CFR 240.10A-3.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Index Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent at this time to an extension of any time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 5: Not applicable.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-CboeBZX-2017-005 Amendment No. 2)

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of a Series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF under the ETF Series Solutions Trust, under Rule 14.11(c)(3), Index Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to list and trade shares of a series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF under the ETF Series Solutions Trust (the “Trust”), under Rule 14.11(c)(3) (“Index Fund Shares”).

The text of the proposed rule change is available at the Exchange’s website at [www.markets.cboe.com](http://www.markets.cboe.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

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

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

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

This Amendment No. 2 to SR-CboeBZX-2017-005 amends and replaces in its entirety Amendment No. 1 to the proposal, which was submitted on April 13, 2018. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details about the Fund.

The Exchange proposes to list and trade shares (“Shares”) of each series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF (each a “Fund” and, collectively, the “Funds”) under Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares based on equity securities indexes on the Exchange. In total, the Exchange is proposing to list and trade Shares of twelve monthly series of the Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy ETF.<sup>3</sup> Each Fund will be an index-based exchange traded fund (“ETF”). The Funds will be the following: Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy

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<sup>3</sup> The Commission has not yet issued an order(s) granting exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) applicable to the activities of the Funds and the Funds will not be listed on the Exchange until such an order(s) is issued and any conditions contained therein are satisfied. To the extent that any information in this proposal is or becomes inaccurate, the Exchange will submit a proposed rule change to reflect any new information before the Funds will be listed on the Exchange.

(January) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (February) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (March) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (April) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (May) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (June) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (July) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (August) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (September) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (October) ETF; Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (November) ETF; and Cboe Vest S&P 500<sup>®</sup> Buffer Protect Strategy (December) ETF. Each Fund will be based on the Cboe S&P 500 Buffer Protect Index (Month) Series, where “Month” is the corresponding month associated with the roll date of the applicable Fund (each an “Index” and, collectively, the “Indexes”).

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. 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>4</sup> The Funds’ adviser, Cboe Vest Financial, LLC (the “Adviser”), and index provider, Cboe Exchange, Inc. (“Cboe Options” or the “Index Provider”), are not registered as broker-dealers, but are affiliated with a broker-dealer. The Index Provider has implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the Indexes. In

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<sup>4</sup> See Registration Statement on Form N-1A for the Trust, dated October 24, 2017 (File Nos. 333-179562 and 811-22668). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement.

addition, Index Provider personnel who make decisions regarding the Index composition or methodology are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Index, pursuant to Rule 14.11(c)(3)(B)(iii). The Adviser has also implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the portfolio. In addition, Adviser personnel who make decisions regarding a Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding a Fund’s portfolio. In the event that (a) the Adviser or Index Provider becomes registered as a broker-dealer or newly affiliated with another 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 and maintain 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.

The Exchange also notes that the Adviser is a BZX Affiliate as defined in Rule 14.3(e)(1)(A),<sup>5</sup> but the Shares of the Funds are not Affiliate Securities, as defined in Rule

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<sup>5</sup> As defined in Rule 14.3(e)(1)(A), the term “BZX Affiliate” means the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where “control” means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

14.11(e)(1)(B),<sup>6</sup> and are therefore not subject to the additional requirements applicable to Affiliate Securities because such definition explicitly excludes Index Fund Shares. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Each Fund's investment objective is to track, before fees and expenses, the performance of its respective Index. The value of each Index is calculated daily by Cboe Options utilizing an option valuation model. The Exchange is submitting this proposed rule change because the Indexes for the Funds do not meet the listing requirements of Rule 14.11(c)(3), which requires, among other things, that all securities in the index or portfolio be U.S. Component Stocks<sup>7</sup> listed on the Exchange or another national securities exchange and be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. As further described below, the Indexes consist of options on an index of U.S. Component Stocks. Because the Indexes consist of options (based on an index of U.S. Component Stocks (the S&P 500 Index)), which are not NMS Stocks as defined in Rule 600 of Regulation NMS under the Act, and Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the index or portfolio shall be NMS Stocks, it does not meet the criteria set forth in Rule 14.11(c)(3). As such, the Exchange submits this proposal to list the Shares on the Exchange.

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<sup>6</sup> As defined in Rule 14.3(e)(1)(B), the term "Affiliate Security" means any security issued by a BZX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c).

<sup>7</sup> As defined in Rule 14.11(c)(1)(D), the term "U.S. Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

Cboe Vest S&P 500<sup>®</sup> Buffer Protect Index

Each Index is a rules-based options index that consists exclusively of FLEXible EXchange Options on the S&P 500 Index (“FLEX Options”) listed on Cboe Options.<sup>8</sup> The Indexes are designed to provide exposure to the large capitalization U.S. equity market with lower volatility and downside risks than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index (the “Roll Date”),<sup>9</sup> the applicable Index implements a portfolio of put and call FLEX Options with expirations on the next Roll Date that, if held to such Roll Date, seeks to “buffer protect” against the first 10% decline in the value of the S&P 500 Index, while providing participation up to a maximum capped gain in the value of the S&P 500 Index (the “Capped Level”). The Capped Level is calculated as of each Roll Date based on the prices of the applicable FLEX Options, such that the value of the portfolio of FLEX Options that comprises each Index is equivalent to the value of a portfolio comprised of the S&P 500 Index constituents. As of the 2017 Roll Date, the Capped Level for the January Index was 11%, meaning that the January Index is designed to provide participation up to a maximum 11% gain in the value of the S&P 500 Index from the 2017 Roll Date to the 2018 Roll

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<sup>8</sup> More information about the Indexes and methodology is available on the Index Provider’s website at [www.cboe.com](http://www.cboe.com).

<sup>9</sup> As described above, each of the twelve Indexes are designed to provide returns over a defined year long period and, thus, there is an Index associated with each month. As such, the Roll Date for a specific Index is dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe<sup>®</sup> S&P 500<sup>®</sup> Buffer Protect Index January Series is in January and the Roll Date for the Cboe<sup>®</sup> S&P 500<sup>®</sup> Buffer Protect Index February Series is in February, a pattern which continues through the rest of the calendar year.

Date, but to not provide any participation for gains in the S&P 500 Index in excess of 11%.

Each Index is designed to provide the following outcomes between Roll Dates:

- If the S&P 500 Index declines more than 10%: the Index declines 10% less than the S&P 500 Index (e.g., if the S&P 500 Index returns -35%, the Index is designed to return -25%);
- If the S&P 500 Index declines between 0% and 10%: the Index provides a total return of zero (0%);
- If the S&P 500 Index appreciates between 0% and the Capped Level: the Index appreciates the same amount as the S&P 500 Index; and
- If the S&P 500 Index appreciates more than the Capped Level: the Index appreciates by the amount of the Capped Level.

Each Index includes a mix of purchased and written (sold) put and call FLEX Options structured to achieve the results described above. Such results are only applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index is calculated daily by Cboe Options utilizing a rules-based options valuation model.

#### Fund Holdings

Under Normal Market Conditions,<sup>10</sup> each Fund will seek to track the total return

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<sup>10</sup> The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God,

performance, before fees and expenses, of its respective Index. Under Normal Market Conditions, each Fund will invest all, or substantially all, of its assets in a combination of some or all of the following: the FLEX Options that make up each respective underlying Index,<sup>11</sup> standardized U.S. exchange-listed options contracts on the S&P 500 Index (“Standardized S&P 500 Index Options” and, collectively with FLEX Options, “S&P 500 Index Options”),<sup>12</sup> and U.S. exchange-listed options on one or more ETFs<sup>13</sup> that track the performance of the S&P 500 Index and have the same economic characteristics as the FLEX Options that make up each Index (“Comparable ETF Options”).<sup>14,15</sup> The Fund may

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armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

- <sup>11</sup> For the reasons outlined in footnote 15 below, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.
- <sup>12</sup> For the reasons outlined in footnote 15 below, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.
- <sup>13</sup> For purposes of this proposal, the term ETF means Portfolio Depositary Receipts and Index Fund Shares as defined in Rule 14.11(b) and 14.11(c), respectively, and their equivalents on other national securities exchanges.
- <sup>14</sup> The term “Comparable ETF Options” will at any time include only the five ETFs based on the S&P 500 Index with the greatest options consolidated average daily exchange trading volume for the previous quarter. The Adviser expects that, to the extent that the Funds use Comparable ETF Options, such options contracts will primarily consist of options on the SPDR S&P 500 ETF (ticker: SPY).
- <sup>15</sup> Because of certain potential limitations of the Investment Company Act of 1940 associated with trading options on Cboe Exchange, Inc. and any other exchanges owned or controlled by Cboe Global Markets, Inc. (collectively, with Cboe Exchange, Inc., “Cboe Exchanges”), the Exchange will not list and trade the Shares of the Funds on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with

also hold cash and cash equivalents.<sup>16</sup> Under Normal Market Conditions, at least 80% of each Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the FLEX Options that make up the Index. The Funds will hold only FLEX Options, Standardized S&P 500 Index Options, Comparable ETF Options, and cash and cash equivalents. The FLEX Options owned by each Fund will have the same terms (i.e. same strike price and expiration) for all investors of that Fund within an outcome period. The outcome period for each of the Funds is one year and all of the outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. The Capped Level is determined with respect to the applicable Index on the inception date of the applicable Fund and at the beginning of each outcome period.

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respect to the Funds. This restriction shall not prevent the Adviser or the Funds from engaging in other transactions or receiving other services from Cboe Exchanges or for which Cboe Exchanges may receive a benefit, such as pricing services, provided such transactions and/or the receipt of such services is consistent with applicable statutes, rules, regulations, and interpretive positions of the Commission and its staff..

<sup>16</sup> For purposes of this filing, cash equivalents are short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

FLEX Options<sup>17</sup>

The market for S&P 500 Index Options traded on Cboe Options is among the most liquid markets in the world. FLEX Options are a subset of S&P 500 Index Options traded on Cboe Options.<sup>18</sup> In 2017, more than 1.16 million options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than \$250 billion in notional volume traded on a daily basis. While FLEX Options are traded differently than traditional options contracts, the Exchange believes that the liquidity and arbitrage opportunities of the S&P 500 Index bolsters the market for FLEX Options, as described below.

Every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery. The process begins with a request for quote (“RFQ”)

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<sup>17</sup> As noted above, because of certain potential limitations of the Investment Company Act of 1940 associated with trading options on Cboe Exchange, Inc. and any other exchanges owned or controlled by Cboe Global Markets, Inc. (collectively, with Cboe Exchange, Inc., “Cboe Exchanges”), the Exchange will not list and trade the Shares of the Funds on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. This restriction shall not prevent the Adviser or the Funds from engaging in other transactions or receiving other services from Cboe Exchanges or for which Cboe Exchanges may receive a benefit, such as pricing services, provided such transactions and/or the receipt of such services is consistent with applicable statutes, rules, regulations, and interpretive positions of the Commission and its staff. As such, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. Similarly, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.

<sup>18</sup> See <https://www.theocc.com/webapps/flex-reports>. Unless otherwise noted, all statistics provided herein are based on information from the Options Clearing Corporation (“OCC”).

in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications-underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of Cboe Options which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by Cboe Options.

#### Additional Discussion

The Exchange believes that sufficient protections are in place to protect against market manipulation of each Fund's Index and Shares, S&P 500 Index Options, and Comparable ETF Options for several reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index help prevent manipulation of the S&P 500 Index and, thus, mitigate risk associated with manipulation in the FLEX Options that comprise the underlying Indexes, along with the Standardized S&P 500 Index Options and Comparable ETF Options that the Funds may hold;<sup>19</sup> (ii) the competitive quoting process for FLEX Options;<sup>20</sup> (iii) the significant liquidity in the market for Standardized

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<sup>19</sup> The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

<sup>20</sup> Intraday quotations and last sale information for FLEX Options are available directly from Cboe Options or through the Options Price Reporting Authority.

S&P 500 Index Options results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and the Financial Industry Regulatory Authority (“FINRA”) designed to detect violations of the federal securities laws and self-regulatory organization (“SRO”) rules.

Trading in the Shares and the underlying investments will be subject to the federal securities laws and Exchange, Cboe Options, FINRA, and, with respect to the Comparable ETF Options, other U.S. options exchanges’ rules and surveillance programs.<sup>21</sup>

The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund’s portfolio, which may be comprised primarily of FLEX Options, will be acquired in extremely liquid and highly regulated markets,<sup>22</sup> the Shares are less readily susceptible to manipulation.

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Additionally, information about existing outstanding interest in FLEX Options is available on the OCC’s website.

<sup>21</sup> The Exchange notes that Cboe Options is a member of the Option Price Regulatory Surveillance Authority, which was established in 2006, to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges. For more information, [see](http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx) <http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx>.

<sup>22</sup> All exchange-listed options contracts that the Funds may hold will trade on a market that is a member of the Intermarket Surveillance Group (“ISG”) and the Funds will not hold any non-exchange-listed options contracts, however, not all of

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolios, reference assets, and Indexes, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of indexes, reference assets, and intraday indicative values, or (d) the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares 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 or Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). Finally, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, S&P 500 Index Options are collectively among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. Similarly, Comparable ETF Options will include only the five most heavily traded options on an

ETF based on the S&P 500 Index,<sup>23</sup> which will mitigate the susceptibility to manipulation in such options contracts, and the highly regulated options markets and the broad base and scope of the S&P 500 Index underlying such ETFs make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. As described above, the Exchange also believes that the liquidity of the markets for S&P 500 Index securities, S&P 500 Index Options, including FLEX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with both the value of the Index underlying each Fund and the price of a Fund's Shares. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the surveillance programs described above, the Exchange does not believe that trading in a Fund's Shares would present manipulation concerns. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).<sup>24</sup> Each Fund's investments will not be used to seek performance that is the

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<sup>23</sup> See supra note 14.

<sup>24</sup> The Funds will each include appropriate risk disclosure in their offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

multiple or inverse multiple (i.e. 2x or -2x) of its respective Index. Each Fund's use of derivative instruments will be collateralized.

The Exchange represents that, except as described above, each Fund will meet each of the initial and continued listing criteria in BZX Rule 14.11(c)(3) with the exception of meeting the requirements of Rule 14.11(c)(3)(A)(i), applicable to the listing of Index Fund Shares based upon an index of "U.S. Component Stocks." The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of each Fund will comply with all other requirements applicable to Index Fund Shares, which includes requirements relating to the dissemination of key information such as the index value,<sup>25</sup> the net asset value, and the intraday indicative value, rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider and Adviser, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

Quotation and last sale information for exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting

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<sup>25</sup> Rule 14.11(c)(3)(B)(ii) requires that the index value must be disseminated by one or more major market data vendors at least once every 15 seconds during regular market session, provided however, that if the index value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated index value must remain available throughout the Exchange's trading hours. The value of the Indexes will not change during the period when trading is occurring on the Exchange and the last official calculated index value will remain available throughout the Exchange's trading hours.

Authority. RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-listed options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Treasury bills and other cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services. On each business day, before commencement of trading in the Shares on the Exchange during Regular Trading Hours, the portfolio that will form the basis for each Fund's calculation of the net asset value at the end of the business day will be provided on the Advisor's website at [www.cboeinvest.com](http://www.cboeinvest.com).

The issuer represents that it will provide and maintain a publicly available web tool for each of the Funds on its website that will provide existing and prospective shareholders with important information to help inform investment decisions. The information provided will include the start and end dates of the current outcome period, the time remaining in the outcome period, the Fund's current net asset value, the Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value. For each of the Funds, the web tool will also provide information regarding each Fund's buffer. This information will include the remaining buffer available for a shareholder purchasing Shares at the current net asset value or the amount of losses that a shareholder purchasing Shares at the current net asset value would incur before benefitting from the protection of the buffer.

The cover of each Fund's prospectus, as well as the disclosure contained in "Principal Investment Strategies," provides the specific web address for each Fund's web tool.

### Suitability

Currently, Rule 3.7(a) provides that a Member, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer, after reasonable inquiry by the Member, as to the customer's other securities holdings and as to the customer's financial situation and needs. Interpretation and Policy .01 to Rule 3.7 provides that no Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position.

Prior to the commencement of trading, the Exchange will inform its Members of the suitability requirements of Rule 3.7 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares.

### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>26</sup> in general and Section 6(b)(5) of the Act<sup>27</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares of the Funds would meet each of the initial and continued listing criteria required by BZX Rule 14.11(c)(3), except that because the Indexes consist of options on an index of U.S. Component Stocks and Rule 14.11(c)(3)(A)(i) applies only to U.S. Component Stocks (that is, the rule provides criteria for an index composed of equity securities and not for an index that is composed of options on an index of equity securities), the Indexes do not meet the criteria set forth in Rule 14.11(c)(3)(A)(i)(e).<sup>28</sup> The Exchange believes that the concerns that Rule

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<sup>26</sup> 15 U.S.C. 78f.

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

<sup>28</sup> Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the

14.11(c)(3)(A)(i) is intended to address are mitigated as it relates to each Fund's Index by: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index which help prevent manipulation of the S&P 500 Index and, thus, mitigate risk associated with manipulation in the FLEX Options that comprise the underlying Indexes, along with the Standardized S&P 500 Index Options and Comparable ETF Options that the Funds may hold;<sup>29</sup> (ii) the competitive quoting process for FLEX Options;<sup>30</sup> (iii) the significant liquidity in the market for Standardized S&P 500 Index Options, which results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio will be acquired in

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Act. Each component stock of the S&P 500 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Funds and the Indexes meet all of the requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3), except the requirements in Rule 14.11(c)(3)(A)(i)(a)-(e), as the Index consists of options on the S&P 500 Index. The S&P 500 Index consists of U.S. Component Stocks and satisfies the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e).

<sup>29</sup> The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

<sup>30</sup> Intraday quotations and last sale information for FLEX Options are available directly from Cboe Options or through the Options Price Reporting Authority. Additionally, information about existing outstanding interest in FLEX Options is available on the OCC's website.

extremely liquid and highly regulated markets, the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolios, reference assets, and Indexes, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of indexes, reference assets, and intraday indicative values, or (d) the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares 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 or Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed options contracts with other markets

and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, S&P 500 Index Options are collectively among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities. Similarly, Comparable ETF Options will include only the five most heavily traded options on an ETF based on the S&P 500 Index,<sup>31</sup> which will mitigate the susceptibility to manipulation in such options contracts, and the highly regulated options markets and the broad base and scope of the S&P 500 Index underlying such ETFs make securities that derive their value from that index less susceptible to market manipulation in view of

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<sup>31</sup> See supra note 14.

market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange also believes that the liquidity of the markets for S&P 500 Index securities, S&P 500 Index Options, including FLEX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with both the value of the Index underlying each Fund and the price of a Fund's Shares. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the surveillance programs described above, the Exchange does not believe that trading in a Fund's Shares would present manipulation concerns. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).<sup>32</sup> Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e. 2x or -2x) of its respective Index. Each Fund's use of derivative instruments will be collateralized.

The Exchange represents that, except as it relates to the options portion of the Indexes described above, the Funds will meet and be subject to all other requirements of Rule 14.11(c)(3) related to generic listing standards of the Indexes and other applicable

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<sup>32</sup> The Funds will each include appropriate risk disclosure in their offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

requirements for such a series of Index Fund Shares under Rule 14.11(c) on an initial and continued listing basis, including those requirements regarding the dissemination of key information such as the index value, net asset value, and the intraday indicative value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, suitability, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules. The Trust is required to comply with Rule 10A-3<sup>33</sup> under the Act for the initial and continued listing of the Shares of the Funds. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Index Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the

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<sup>33</sup> See 17 CFR 240.10A-3.

proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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](mailto:rule-comments@sec.gov). Please include File No. SR-CboeBZX-2017-005 Amendment No. 2 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 No. SR-CboeBZX-2017-005 Amendment No. 2.

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 am and 3:00 pm. 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBZX-2017-005 Amendment No. 2 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

Robert W. Errett  
Deputy Secretary

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<sup>34</sup> 17 CFR 200.30-3(a)(12).