



October 2, 2018

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

Re: File No. SR-CboeBZX-2018-044, Amendment No. 1

Dear Mr. Fields:

On September 28, 2018, Cboe BZX Exchange, Inc. (the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) Amendment No. 1 to SR-CboeBZX-2018-044 in order to clarify certain points and add additional details. Amendment No. 1 to SR-CboeBZX-2018-044 amends and replaces in its entirety the proposal as originally submitted on June 21, 2018. The Exchange submitted proposal SR-CboeBZX-2018-044 in order to amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements. In order to provide notice for public review of this Amendment No. 1, 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 extending to the right.

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

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

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

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

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

The Exchange proposes to amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements.

**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 \* Kyle Last Name \* Murray  
 Title \* Assistant General Counsel  
 E-mail \* [REDACTED]  
 Telephone \* [REDACTED] Fax [REDACTED]

**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 \*) Assistant General Counsel

Date 09/28/2018  
 By Kyle Murray (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> Bats BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements.

(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 June 14, 2018.

(b) Please refer questions and comments on the proposed rule change to Patrick 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

This Amendment No. 1 to SR-CboeBZX-2018-044 amends and replaces in its entirety the proposal as originally submitted on June 21, 2018. The Exchange submits

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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. 1 in order to clarify certain points and add additional details about the proposal.

The Exchange proposes to amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements. More specifically, the Exchange is proposing to make clear that any instance of the phrase “index or portfolio” or “portfolio or index” in Rule 14.11(c),<sup>3</sup> shall be interpreted as referring to the constituents of the underlying index or the portfolio holdings of the series of Index Fund Shares. Consistent with this change, the Exchange is also proposing to delete “or portfolio” from references to “index or portfolio” in Rules 14.11(c)(1)(C), 14.11(c)(8), and 14.11(c)(9)(B)(i)(b) in order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares. The Exchange is also proposing to make a non-substantive clean-up change to Rule 14.11(c)(9)(B)(i)(b) by adding the word “a” in front of “new index.”

Practically, this proposal provides that a series of Index Fund Shares will be deemed to meet the Generic Listing Standards on a continuous basis where the underlying index meets the Generic Listing Standards or the fund’s portfolio holdings meet the Generic Listing Standards. The Generic Listing Standards were designed to allow certain series of Index Fund Shares to be listed on the Exchange that, by virtue of meeting certain quantitative standards, are deemed as not being susceptible to manipulation and for which the creation and redemption process and arbitrage

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<sup>3</sup> For purposes of this proposal, Rule 14.11(c) excluding Rule 14.11(c)(3)(A)(iii), 14.11(c)(8), 14.11(c)(9)(B)(i)(b), and 14.11(c)(10) shall generally be referred to as the “Generic Listing Standards.”

mechanism will operate efficiently.<sup>4</sup> Historically, Rule 14.11(c) provided that the Generic Listing Standards did not apply on an ongoing basis and meeting such requirements was required only prior to the series of Index Fund Shares being listed on the Exchange. Because such determination occurred prior to listing on the Exchange, the index constituents constituted a better means for determining whether a series of Index Fund Shares would be susceptible to manipulation and whether the creation and redemption process and arbitrage mechanism would operate efficiently because the underlying index constituents are much more fully developed and less theoretical than both the portfolio holdings of a yet to be launched fund or a sample portfolio, respectively. However, the Exchange believes that after a series of Index Fund Shares is listed on the Exchange, both the index constituents and the portfolio holdings are equally viable for evaluating whether the shares are susceptible to manipulation and the efficiency of the creation and redemption process and the arbitrage mechanism.

On January 1, 2018, the Generic Listing Standards began applying on both an initial and continuous basis,<sup>5</sup> but the Adopting Order did not address the issue of whether the portfolio holdings could satisfy the Generic Listing Standards and, thus, the underlying index remains the only basis for determining whether a series of Index Fund

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<sup>4</sup> Series of Index Fund Shares that meet the Generic Listing Standards and the other applicable provisions of Rule 14.11(c) are allowed to list on the Exchange pursuant to Rule 19b-4(e). See 17 CFR 240.19b-4(e).

<sup>5</sup> Securities Exchange Act Release Nos. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017) (SR-BatsBZX-2016-80) (order approving the application of listing standards on a continuous basis) (the “Adopting Order”) and 81777 (September 29, 2017), 82 FR 46583 (October 5, 2017) (notice of filing and immediate effectiveness of proposed rule change to extend implementation to January 1, 2018).

Shares meets the Generic Listing Standards. Looking only to the index constituents to determine whether a series of Index Fund Shares can continue to be listed on the Exchange is not necessary in order to accomplish the policy goals underlying the rules for a number of reasons, as further laid out below. As such, the Exchange is submitting this proposal in order to provide that where either the constituents of the underlying index or the portfolio holdings for a series of Index Fund Shares meet the Generic Listing Standards, such series of Index Fund Shares will be deemed to meet the Generic Listing Standards.

Portfolio holdings are at least as accurate of a measure as the index constituents to evaluate whether a series of Index Fund Shares is consistent with the policy goals after such fund is already listed and trading on the Exchange. When determining whether a series of Index Fund Shares is going to be susceptible to manipulation and how efficiently the creation and redemption process and the arbitrage mechanism will operate, the Generic Listing Standards require that the underlying assets associated with a series of Index Fund Shares are sufficiently liquid, diverse, un-concentrated, and large. The portfolio holdings are arguably a better means for making this determination than the index constituents because the portfolio holdings reflect the actual assets held by the series of Index Fund Shares while the index constituents are just the assets that the series is designed to track. As such, the Exchange is proposing that where either the portfolio holdings or the index constituents meet the Generic Listing Standards, the series of Index Fund Shares should be considered to meet the Generic Listing Standards and be able to continue to be listed on the Exchange.

Further, every index is bound by its respective methodology. This process is intentionally out of the control of the issuers, whose products are ultimately required to meet the Generic Listing Standards. While it makes sense to look to the index constituents for compliance with the Generic Listing Standards on an initial basis, it becomes problematic on an ongoing basis. Where the index constituents no longer meet the Generic Listing Standards, the only way that the constituents can get back into compliance is through natural market movements, an index rebalance, a change to the index methodology, or a change of index. It is not feasible for an issuer to rely on natural market movements to bring a series of Index Fund Shares back into compliance with the Generic Listing Standards. An index rebalance may bring a series of Index Fund Shares back into compliance with the Generic Listing Standards, but it isn't guaranteed (index providers do not generally consider the Generic Listing Standards in constructing indexes) and may not occur within the time frame of the cure periods provided under Rule 14.12 (rebalances generally occur quarterly or annually).<sup>6</sup> Changes to an index methodology or changing the underlying index would require significant effort and months of notice, again putting the timeline for implementation outside of the window for the cure periods in Rule 14.12. Providing that a series of Index Fund Shares meets the Generic Listing Standards where the portfolio holdings meet the Generic Listing Standards will allow issuers with a greater degree of control over whether their products meet their ongoing listing obligations. While such portfolio holdings will still be required to meet the requirements under the Investment Company Act of 1940 related to tracking

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<sup>6</sup> Rule 14.12 and, more specifically, Rule 14.12(f)(2)(B)(i) allow for an extension of up to 180 calendar days from initial notice of non-compliance with the Generic Listing Standards.

the underlying index and the 80% Rule, as further discussed below, such flexibility will allow issuers to continue to meet the Generic Listing Standards even where an underlying index narrowly fails to meet them.

Additionally, the generic listing standards applicable to a series of Managed Fund Shares under Rule 14.11(i) look only to portfolio holdings to determine compliance with ongoing listing obligations.<sup>7</sup> While there are certain differences between the generic listing standards applicable to Index Fund Shares and Managed Fund Shares, the only substantive difference between the two product types is that Index Fund Shares are designed to track the returns of an underlying index and Managed Fund Shares employ an actively managed portfolio that is designed to accomplish an investment objective rather than tracking an index. The Commission determined that using the portfolio holdings to measure compliance with the generic listing standards for Managed Fund Shares was consistent with the Act in the Active Generics Approval Order. The Exchange believes that the same rationale underlying the Active Generics Approval should be extended to Index Fund Shares because the same concerns related to manipulation and the efficiency of the arbitrage mechanism exist for both Managed Fund Shares and Index Fund Shares, regardless of whether a fund is designed to track an underlying index or not. As such, the Exchange believes that it would be consistent with the Act for compliance with the Generic Listing Standards to be evaluated based on either the series of Index Fund Shares underlying index constituents or portfolio holdings.

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<sup>7</sup> See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (the “Active Generics Approval Order”).

Allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards could raise concerns that a series of Index Fund Shares may potentially be based on an index that does not meet the Generic Listing Standards and therefore may be susceptible to manipulation. The Exchange, however, points out that such concerns fail to acknowledge the status quo – that a series of Index Fund Shares could be based on an index that meets the Generic Listing Standards, but have portfolio holdings that do not meet the Generic Listing Standards, meaning that the actual holdings of a fund could theoretically be susceptible to manipulation and/or the creation and redemption process and arbitrage mechanism would not operate efficiently. The Exchange believes that if such a scenario is consistent with the Act, then the inverse would also be consistent with the Act – where the portfolio holdings of a series of Index Fund Shares meet the Generic Listing Requirements and are therefore not susceptible to manipulation and will allow for an efficient arbitrage mechanism, but the underlying index may not meet the Generic Listing Standards.

Further to this point, the Exchange also notes that any series of Index Fund Shares listed on the Exchange would also be required to meet all requirements applicable under the Investment Company Act of 1940, including Rule 35d-1<sup>8</sup> requiring a series of Index Fund Shares to invest at least 80% of its assets in investments connoted by the applicable index (the “80% Rule”).<sup>9</sup> Where an underlying index meets the Generic Listing Standards, the 80% Rule acts as a backstop that provides a general assurance that even if

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<sup>8</sup> 17 CFR 270.35d-1.

<sup>9</sup> See Investment Company Act Release No. 24828 (January 17, 2001), 66 FR 8509 (February 1, 2001) at 8511.

the portfolio holdings do not meet the Generic Listing Standards, they will have significant overlap with the index constituents that do meet the Generic Listing Standards. Similarly, if the portfolio holdings were used to comply with the Generic Listing Standards, the 80% Rule would provide assurances that the underlying index constituents would have significant overlap with the portfolio holdings that meet the Generic Listing Standards.

As such, the Exchange does not believe that allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards will increase the susceptibility to manipulation of Index Fund Shares listed on the Exchange. The 80% Rule will act as a backstop in a manner similar to the way it does today by ensuring that there is significant overlap between the portfolio holdings of a series of Index Fund Shares that meets the Generic Listing Standards and the underlying index constituents.

In sum, the Exchange believes that by allowing a series of Index Fund Shares to comply with the Generic Listing Standards where either its portfolio holdings or index constituents meet the Generic Listing Standards, the proposal would provide issuers with significant additional regulatory certainty related to a fund's ability to continue to be listed and traded on the Exchange pursuant to the Rule 19b-4(e), while simultaneously continuing to accomplish the policy goals underlying the Generic Listing Standards.<sup>10</sup> The Exchange believes that this proposal would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed

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<sup>10</sup> The Exchange does not believe that this proposal will result in any meaningful additional costs associated with regulatory review, however, to the extent that it does, the Exchange represents that it either already has or will dedicate sufficient additional resources to perform such reviews.

amendments would create greater investor confidence in exchange-traded products generally because there will be a greater degree of certainty that Index Fund Shares will not be subject to regulatory action or delisting.

The Exchange is also proposing to delete “or portfolio” from references to “index or portfolio” in Rules 14.11(c)(1)(C), 14.11(c)(8), and 14.11(c)(9)(B)(i)(b) in order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares. Specifically, the Exchange is proposing to delete such references because they are referencing the index or indexes on which a series of Index Fund Shares are based and are not intended to reference portfolio holdings.

b. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Index Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange believes the proposed amendments, by explicitly permitting the portfolio holdings to determine compliance with the Generic Listing Standards, would provide issuers with significant additional regulatory certainty related to a fund's ability to continue to be listed and traded on the Exchange pursuant to the Rule 19b-4(e), while simultaneously continuing to accomplish the policy goals underlying the Generic Listing Standards, which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would create greater investor confidence in exchange-traded products generally because there will be a greater degree of certainty that Index Fund Shares will not be subject to regulatory action or delisting.

The Exchange believes that looking only to the index constituents to determine whether a series of Index Fund Shares can continue to be listed on the Exchange is actually inconsistent with the policy goals underlying the Generic Listing Standards for a number of reasons, as further laid out below.

Portfolio holdings are at least as accurate of a measure as the index constituents to evaluate whether a series of Index Fund Shares is consistent with the policy goals after such fund is already listed and trading on the Exchange. When determining whether a series of Index Fund Shares is going to be susceptible to manipulation and how efficiently the creation and redemption process and the arbitrage mechanism will operate, the Generic Listing Standards require that the underlying assets associated with a series

of Index Fund Shares are sufficiently liquid, diverse, un-concentrated, and large. The portfolio holdings are arguably a better means for making this determination than the index constituents because the portfolio holdings reflect the actual assets held by the series of Index Fund Shares while the index constituents are just the assets that the series is designed to track. As such, the Exchange is proposing that where either the portfolio holdings or the index constituents meet the Generic Listing Standards, the series of Index Fund Shares should be considered to meet the Generic Listing Standards and be able to continue to be listed on the Exchange.

Further, every index is bound by its respective methodology. This process is intentionally out of the control of the issuers, whose products are ultimately required to meet the Generic Listing Standards. While it makes sense to look to the index constituents for compliance with the Generic Listing Standards on an initial basis, it becomes problematic on an ongoing basis. Where the index constituents no longer meet the Generic Listing Standards, the only way that the constituents can get back into compliance is through natural market movements, an index rebalance, a change to the index methodology, or a change of index. It is not feasible for an issuer to rely on natural market movements to bring a series of Index Fund Shares back into compliance with the Generic Listing Standards. An index rebalance may bring a series of Index Fund Shares back into compliance with the Generic Listing Standards, but it isn't guaranteed (index providers do not generally consider the Generic Listing Standards in constructing indexes) and may not occur within the time frame of the cure periods provided under

Rule 14.12 (rebalances generally occur quarterly or annually).<sup>13</sup> Changes to an index methodology or changing the underlying index would require significant effort and months of notice, again putting the timeline for implementation outside of the window for the cure periods in Rule 14.12. Providing that a series of Index Fund Shares meets the Generic Listing Standards where the portfolio holdings meet the Generic Listing Standards will allow issuers with a greater degree of control over whether their products meet their ongoing listing obligations. While such portfolio holdings will still be required to meet the requirements under the Investment Company Act of 1940 related to tracking the underlying index and the 80% Rule, as further discussed below, such flexibility will allow issuers to continue to meet the Generic Listing Standards even where an underlying index narrowly fails to meet them.

Additionally, the generic listing standards applicable to a series of Managed Fund Shares under Rule 14.11(i) look only to portfolio holdings to determine compliance with ongoing listing obligations.<sup>14</sup> While there are certain differences between the generic listing standards applicable to Index Fund Shares and Managed Fund Shares, the only substantive difference between the two product types is that Index Fund Shares are designed to track the returns of an underlying index and Managed Fund Shares employ an actively managed portfolio that is designed to accomplish an investment objective rather than tracking an index. The Commission determined that using the portfolio holdings to

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<sup>13</sup> Rule 14.12 and, more specifically, Rule 14.12(f)(2)(B)(i) allow for an extension of up to 180 calendar days from initial notice of non-compliance with the Generic Listing Standards.

<sup>14</sup> See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (the “Active Generics Approval Order”).

measure compliance with the generic listing standards for Managed Fund Shares was consistent with the Act in the Active Generics Approval Order. The Exchange believes that the same rationale underlying the Active Generics Approval should be extended to Index Fund Shares because the same concerns related to manipulation and the efficiency of the arbitrage mechanism exist for both Managed Fund Shares and Index Fund Shares, regardless of whether a fund is designed to track an underlying index or not. As such, the Exchange believes that it would be consistent with the Act for compliance with the Generic Listing Standards to be evaluated based on either the series of Index Fund Shares underlying index constituents or portfolio holdings.

Allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards could raise concerns that a series of Index Fund Shares may potentially be based on an index that does not meet the Generic Listing Standards and therefore may be susceptible to manipulation. The Exchange, however, points out that such concerns fail to acknowledge the status quo – that a series of Index Fund Shares could be based on an index that meets the Generic Listing Standards, but have portfolio holdings that do not meet the Generic Listing Standards, meaning that the actual holdings of a fund could theoretically be susceptible to manipulation and/or the creation and redemption process and arbitrage mechanism would not operate efficiently. The Exchange believes that if such a scenario is consistent with the Act, then the inverse would also be consistent with the Act – where the portfolio holdings of a series of Index Fund Shares meet the Generic Listing Requirements and are therefore not susceptible to manipulation and will allow for an efficient arbitrage mechanism, but the underlying index may not meet the Generic Listing Standards.

Further to this point, the Exchange also notes that any series of Index Fund Shares listed on the Exchange would also be required to meet all requirements applicable under the Investment Company Act of 1940, including Rule 35d-1<sup>15</sup> requiring a series of Index Fund Shares to invest at least 80% of its assets in investments connoted by the applicable index (the “80% Rule”). Where an underlying index meets the Generic Listing Standards, the 80% Rule acts as a backstop that provides a general assurance that even if the portfolio holdings do not meet the Generic Listing Standards, they will have significant overlap with the index constituents that do meet the Generic Listing Standards. Similarly, if the portfolio holdings were used to comply with the Generic Listing Standards, the 80% Rule would provide assurances that the underlying index constituents would have significant overlap with the portfolio holdings that meet the Generic Listing Standards.

As such, the Exchange does not believe that allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards will increase the susceptibility to manipulation of Index Fund Shares listed on the Exchange. The 80% Rule will act as a backstop in a manner similar to the way it does today by ensuring that there is significant overlap between the portfolio holdings of a series of Index Fund Shares that meets the Generic Listing Standards and the underlying index constituents.

Finally, the Exchange believes that deleting “or portfolio” from references to “index or portfolio” in Rules 14.11(c)(8) and 14.11(c)(9)(B)(i)(b) in order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares and making a non-substantive clean-up change to Rule 14.11(c)(9)(B)(i)(b) is consistent with the Act because it is designed to promote just and equitable principles of

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<sup>15</sup> 17 CFR 270.35d-1.

trade, and, in general, to protect investors and the public interest and because it is designed to make the rules of the Exchange more straight-forward and easily understandable.

For the above reasons, the Exchange believes that the proposal 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 believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would allow the portfolio holdings for a series of Index Fund Shares to be used to determine compliance with the Generic Listing Standards in addition to the index constituents, which will provide greater regulatory certainty for issuers of Index Fund Shares by providing flexibility that will allow them to continue listing on the Exchange even in the event that an underlying index narrowly fails to meet the Generic Listing Standards, which would 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

Not applicable.

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 – 4: Not applicable.

Exhibit 5: Text of the Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-CboeBZX-2018-044 Amendment No. 1)

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend BZX Rule 14.11(c), 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 amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements.

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. 1 to SR-CboeBZX-2018-044 amends and replaces in its entirety the proposal as originally submitted on June 21, 2018. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details about the proposal.

The Exchange proposes to amend BZX Rule 14.11(c), Index Fund Shares, to make clear that a series of Index Fund Shares meets the quantitative requirements of Rules 14.11(c)(3), (4), and (5) where either the index or portfolio holdings underlying such fund meets the quantitative requirements. More specifically, the Exchange is proposing to make clear that any instance of the phrase “index or portfolio” or “portfolio or index” in Rule 14.11(c),<sup>3</sup> shall be interpreted as referring to the constituents of the underlying index or the portfolio holdings of the series of Index Fund Shares. Consistent with this change, the Exchange is also proposing to delete “or portfolio” from references to “index or portfolio” in Rules 14.11(c)(1)(C), 14.11(c)(8), and 14.11(c)(9)(B)(i)(b) in

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<sup>3</sup> For purposes of this proposal, Rule 14.11(c) excluding Rule 14.11(c)(3)(A)(iii), 14.11(c)(8), 14.11(c)(9)(B)(i)(b), and 14.11(c)(10) shall generally be referred to as the “Generic Listing Standards.”

order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares. The Exchange is also proposing to make a non-substantive clean-up change to Rule 14.11(c)(9)(B)(i)(b) by adding the word “a” in front of “new index.”

Practically, this proposal provides that a series of Index Fund Shares will be deemed to meet the Generic Listing Standards on a continuous basis where the underlying index meets the Generic Listing Standards or the fund’s portfolio holdings meet the Generic Listing Standards. The Generic Listing Standards were designed to allow certain series of Index Fund Shares to be listed on the Exchange that, by virtue of meeting certain quantitative standards, are deemed as not being susceptible to manipulation and for which the creation and redemption process and arbitrage mechanism will operate efficiently.<sup>4</sup> Historically, Rule 14.11(c) provided that the Generic Listing Standards did not apply on an ongoing basis and meeting such requirements was required only prior to the series of Index Fund Shares being listed on the Exchange. Because such determination occurred prior to listing on the Exchange, the index constituents constituted a better means for determining whether a series of Index Fund Shares would be susceptible to manipulation and whether the creation and redemption process and arbitrage mechanism would operate efficiently because the underlying index constituents are much more fully developed and less theoretical than both the portfolio holdings of a yet to be launched fund or a sample portfolio, respectively. However, the Exchange believes that after a series of Index Fund Shares is listed on the Exchange, both the index constituents and the portfolio holdings are equally

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<sup>4</sup> Series of Index Fund Shares that meet the Generic Listing Standards and the other applicable provisions of Rule 14.11(c) are allowed to list on the Exchange pursuant to Rule 19b-4(e). See 17 CFR 240.19b-4(e).

viable for evaluating whether the shares are susceptible to manipulation and the efficiency of the creation and redemption process and the arbitrage mechanism.

On January 1, 2018, the Generic Listing Standards began applying on both an initial and continuous basis,<sup>5</sup> but the Adopting Order did not address the issue of whether the portfolio holdings could satisfy the Generic Listing Standards and, thus, the underlying index remains the only basis for determining whether a series of Index Fund Shares meets the Generic Listing Standards. Looking only to the index constituents to determine whether a series of Index Fund Shares can continue to be listed on the Exchange is not necessary in order to accomplish the policy goals underlying the rules for a number of reasons, as further laid out below. As such, the Exchange is submitting this proposal in order to provide that where either the constituents of the underlying index or the portfolio holdings for a series of Index Fund Shares meet the Generic Listing Standards, such series of Index Fund Shares will be deemed to meet the Generic Listing Standards.

Portfolio holdings are at least as accurate of a measure as the index constituents to evaluate whether a series of Index Fund Shares is consistent with the policy goals after such fund is already listed and trading on the Exchange. When determining whether a series of Index Fund Shares is going to be susceptible to manipulation and how efficiently the creation and redemption process and the arbitrage mechanism will operate,

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<sup>5</sup> Securities Exchange Act Release Nos. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017) (SR-BatsBZX-2016-80) (order approving the application of listing standards on a continuous basis) (the “Adopting Order”) and 81777 (September 29, 2017), 82 FR 46583 (October 5, 2017) (notice of filing and immediate effectiveness of proposed rule change to extend implementation to January 1, 2018).

the Generic Listing Standards require that the underlying assets associated with a series of Index Fund Shares are sufficiently liquid, diverse, un-concentrated, and large. The portfolio holdings are arguably a better means for making this determination than the index constituents because the portfolio holdings reflect the actual assets held by the series of Index Fund Shares while the index constituents are just the assets that the series is designed to track. As such, the Exchange is proposing that where either the portfolio holdings or the index constituents meet the Generic Listing Standards, the series of Index Fund Shares should be considered to meet the Generic Listing Standards and be able to continue to be listed on the Exchange.

Further, every index is bound by its respective methodology. This process is intentionally out of the control of the issuers, whose products are ultimately required to meet the Generic Listing Standards. While it makes sense to look to the index constituents for compliance with the Generic Listing Standards on an initial basis, it becomes problematic on an ongoing basis. Where the index constituents no longer meet the Generic Listing Standards, the only way that the constituents can get back into compliance is through natural market movements, an index rebalance, a change to the index methodology, or a change of index. It is not feasible for an issuer to rely on natural market movements to bring a series of Index Fund Shares back into compliance with the Generic Listing Standards. An index rebalance may bring a series of Index Fund Shares back into compliance with the Generic Listing Standards, but it isn't guaranteed (index providers do not generally consider the Generic Listing Standards in constructing indexes) and may not occur within the time frame of the cure periods provided under

Rule 14.12 (rebalances generally occur quarterly or annually).<sup>6</sup> Changes to an index methodology or changing the underlying index would require significant effort and months of notice, again putting the timeline for implementation outside of the window for the cure periods in Rule 14.12. Providing that a series of Index Fund Shares meets the Generic Listing Standards where the portfolio holdings meet the Generic Listing Standards will allow issuers with a greater degree of control over whether their products meet their ongoing listing obligations. While such portfolio holdings will still be required to meet the requirements under the Investment Company Act of 1940 related to tracking the underlying index and the 80% Rule, as further discussed below, such flexibility will allow issuers to continue to meet the Generic Listing Standards even where an underlying index narrowly fails to meet them.

Additionally, the generic listing standards applicable to a series of Managed Fund Shares under Rule 14.11(i) look only to portfolio holdings to determine compliance with ongoing listing obligations.<sup>7</sup> While there are certain differences between the generic listing standards applicable to Index Fund Shares and Managed Fund Shares, the only substantive difference between the two product types is that Index Fund Shares are designed to track the returns of an underlying index and Managed Fund Shares employ an actively managed portfolio that is designed to accomplish an investment objective rather than tracking an index. The Commission determined that using the portfolio holdings to

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<sup>6</sup> Rule 14.12 and, more specifically, Rule 14.12(f)(2)(B)(i) allow for an extension of up to 180 calendar days from initial notice of non-compliance with the Generic Listing Standards.

<sup>7</sup> See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (the “Active Generics Approval Order”).

measure compliance with the generic listing standards for Managed Fund Shares was consistent with the Act in the Active Generics Approval Order. The Exchange believes that the same rationale underlying the Active Generics Approval should be extended to Index Fund Shares because the same concerns related to manipulation and the efficiency of the arbitrage mechanism exist for both Managed Fund Shares and Index Fund Shares, regardless of whether a fund is designed to track an underlying index or not. As such, the Exchange believes that it would be consistent with the Act for compliance with the Generic Listing Standards to be evaluated based on either the series of Index Fund Shares underlying index constituents or portfolio holdings.

Allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards could raise concerns that a series of Index Fund Shares may potentially be based on an index that does not meet the Generic Listing Standards and therefore may be susceptible to manipulation. The Exchange, however, points out that such concerns fail to acknowledge the status quo – that a series of Index Fund Shares could be based on an index that meets the Generic Listing Standards, but have portfolio holdings that do not meet the Generic Listing Standards, meaning that the actual holdings of a fund could theoretically be susceptible to manipulation and/or the creation and redemption process and arbitrage mechanism would not operate efficiently. The Exchange believes that if such a scenario is consistent with the Act, then the inverse would also be consistent with the Act – where the portfolio holdings of a series of Index Fund Shares meet the Generic Listing Requirements and are therefore not susceptible to manipulation and will allow for an efficient arbitrage mechanism, but the underlying index may not meet the Generic Listing Standards.

Further to this point, the Exchange also notes that any series of Index Fund Shares listed on the Exchange would also be required to meet all requirements applicable under the Investment Company Act of 1940, including Rule 35d-1<sup>8</sup> requiring a series of Index Fund Shares to invest at least 80% of its assets in investments connoted by the applicable index (the “80% Rule”).<sup>9</sup> Where an underlying index meets the Generic Listing Standards, the 80% Rule acts as a backstop that provides a general assurance that even if the portfolio holdings do not meet the Generic Listing Standards, they will have significant overlap with the index constituents that do meet the Generic Listing Standards. Similarly, if the portfolio holdings were used to comply with the Generic Listing Standards, the 80% Rule would provide assurances that the underlying index constituents would have significant overlap with the portfolio holdings that meet the Generic Listing Standards.

As such, the Exchange does not believe that allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards will increase the susceptibility to manipulation of Index Fund Shares listed on the Exchange. The 80% Rule will act as a backstop in a manner similar to the way it does today by ensuring that there is significant overlap between the portfolio holdings of a series of Index Fund Shares that meets the Generic Listing Standards and the underlying index constituents.

In sum, the Exchange believes that by allowing a series of Index Fund Shares to comply with the Generic Listing Standards where either its portfolio holdings or index

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<sup>8</sup> 17 CFR 270.35d-1.

<sup>9</sup> See Investment Company Act Release No. 24828 (January 17, 2001), 66 FR 8509 (February 1, 2001) at 8511.

constituents meet the Generic Listing Standards, the proposal would provide issuers with significant additional regulatory certainty related to a fund's ability to continue to be listed and traded on the Exchange pursuant to the Rule 19b-4(e), while simultaneously continuing to accomplish the policy goals underlying the Generic Listing Standards.<sup>10</sup> The Exchange believes that this proposal would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would create greater investor confidence in exchange-traded products generally because there will be a greater degree of certainty that Index Fund Shares will not be subject to regulatory action or delisting.

The Exchange is also proposing to delete "or portfolio" from references to "index or portfolio" in Rules 14.11(c)(1)(C), 14.11(c)(8), and 14.11(c)(9)(B)(i)(b) in order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares. Specifically, the Exchange is proposing to delete such references because they are referencing the index or indexes on which a series of Index Fund Shares are based and are not intended to reference portfolio holdings.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</sup> in

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<sup>10</sup> The Exchange does not believe that this proposal will result in any meaningful additional costs associated with regulatory review, however, to the extent that it does, the Exchange represents that it either already has or will dedicate sufficient additional resources to perform such reviews.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Index Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange believes the proposed amendments, by explicitly permitting the portfolio holdings to determine compliance with the Generic Listing Standards, would provide issuers with significant additional regulatory certainty related to a fund's ability to continue to be listed and traded on the Exchange pursuant to the Rule 19b-4(e), while simultaneously continuing to accomplish the policy goals underlying the Generic Listing Standards, which would enhance competition among market participants, to the benefit of investors and the marketplace. In addition, the proposed amendments would create greater investor confidence in exchange-traded products generally because there will be a greater degree of certainty that Index Fund Shares will not be subject to regulatory action or delisting.

The Exchange believes that looking only to the index constituents to determine whether a series of Index Fund Shares can continue to be listed on the Exchange is

actually inconsistent with the policy goals underlying the Generic Listing Standards for a number of reasons, as further laid out below.

Portfolio holdings are at least as accurate of a measure as the index constituents to evaluate whether a series of Index Fund Shares is consistent with the policy goals after such fund is already listed and trading on the Exchange. When determining whether a series of Index Fund Shares is going to be susceptible to manipulation and how efficiently the creation and redemption process and the arbitrage mechanism will operate, the Generic Listing Standards require that the underlying assets associated with a series of Index Fund Shares are sufficiently liquid, diverse, un-concentrated, and large. The portfolio holdings are arguably a better means for making this determination than the index constituents because the portfolio holdings reflect the actual assets held by the series of Index Fund Shares while the index constituents are just the assets that the series is designed to track. As such, the Exchange is proposing that where either the portfolio holdings or the index constituents meet the Generic Listing Standards, the series of Index Fund Shares should be considered to meet the Generic Listing Standards and be able to continue to be listed on the Exchange.

Further, every index is bound by its respective methodology. This process is intentionally out of the control of the issuers, whose products are ultimately required to meet the Generic Listing Standards. While it makes sense to look to the index constituents for compliance with the Generic Listing Standards on an initial basis, it becomes problematic on an ongoing basis. Where the index constituents no longer meet the Generic Listing Standards, the only way that the constituents can get back into compliance is through natural market movements, an index rebalance, a change to the

index methodology, or a change of index. It is not feasible for an issuer to rely on natural market movements to bring a series of Index Fund Shares back into compliance with the Generic Listing Standards. An index rebalance may bring a series of Index Fund Shares back into compliance with the Generic Listing Standards, but it isn't guaranteed (index providers do not generally consider the Generic Listing Standards in constructing indexes) and may not occur within the time frame of the cure periods provided under Rule 14.12 (rebalances generally occur quarterly or annually).<sup>13</sup> Changes to an index methodology or changing the underlying index would require significant effort and months of notice, again putting the timeline for implementation outside of the window for the cure periods in Rule 14.12. Providing that a series of Index Fund Shares meets the Generic Listing Standards where the portfolio holdings meet the Generic Listing Standards will allow issuers with a greater degree of control over whether their products meet their ongoing listing obligations. While such portfolio holdings will still be required to meet the requirements under the Investment Company Act of 1940 related to tracking the underlying index and the 80% Rule, as further discussed below, such flexibility will allow issuers to continue to meet the Generic Listing Standards even where an underlying index narrowly fails to meet them.

Additionally, the generic listing standards applicable to a series of Managed Fund Shares under Rule 14.11(i) look only to portfolio holdings to determine compliance with

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<sup>13</sup> Rule 14.12 and, more specifically, Rule 14.12(f)(2)(B)(i) allow for an extension of up to 180 calendar days from initial notice of non-compliance with the Generic Listing Standards.

ongoing listing obligations.<sup>14</sup> While there are certain differences between the generic listing standards applicable to Index Fund Shares and Managed Fund Shares, the only substantive difference between the two product types is that Index Fund Shares are designed to track the returns of an underlying index and Managed Fund Shares employ an actively managed portfolio that is designed to accomplish an investment objective rather than tracking an index. The Commission determined that using the portfolio holdings to measure compliance with the generic listing standards for Managed Fund Shares was consistent with the Act in the Active Generics Approval Order. The Exchange believes that the same rationale underlying the Active Generics Approval should be extended to Index Fund Shares because the same concerns related to manipulation and the efficiency of the arbitrage mechanism exist for both Managed Fund Shares and Index Fund Shares, regardless of whether a fund is designed to track an underlying index or not. As such, the Exchange believes that it would be consistent with the Act for compliance with the Generic Listing Standards to be evaluated based on either the series of Index Fund Shares underlying index constituents or portfolio holdings.

Allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards could raise concerns that a series of Index Fund Shares may potentially be based on an index that does not meet the Generic Listing Standards and therefore may be susceptible to manipulation. The Exchange, however, points out that such concerns fail to acknowledge the status quo – that a series of Index Fund Shares could be based on an index that meets the Generic Listing Standards, but have portfolio

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<sup>14</sup> See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (the “Active Generics Approval Order”).

holdings that do not meet the Generic Listing Standards, meaning that the actual holdings of a fund could theoretically be susceptible to manipulation and/or the creation and redemption process and arbitrage mechanism would not operate efficiently. The Exchange believes that if such a scenario is consistent with the Act, then the inverse would also be consistent with the Act – where the portfolio holdings of a series of Index Fund Shares meet the Generic Listing Requirements and are therefore not susceptible to manipulation and will allow for an efficient arbitrage mechanism, but the underlying index may not meet the Generic Listing Standards.

Further to this point, the Exchange also notes that any series of Index Fund Shares listed on the Exchange would also be required to meet all requirements applicable under the Investment Company Act of 1940, including Rule 35d-1<sup>15</sup> requiring a series of Index Fund Shares to invest at least 80% of its assets in investments connoted by the applicable index (the “80% Rule”). Where an underlying index meets the Generic Listing Standards, the 80% Rule acts as a backstop that provides a general assurance that even if the portfolio holdings do not meet the Generic Listing Standards, they will have significant overlap with the index constituents that do meet the Generic Listing Standards. Similarly, if the portfolio holdings were used to comply with the Generic Listing Standards, the 80% Rule would provide assurances that the underlying index constituents would have significant overlap with the portfolio holdings that meet the Generic Listing Standards.

As such, the Exchange does not believe that allowing the portfolio holdings of a series of Index Fund Shares to satisfy the Generic Listing Standards will increase the susceptibility to manipulation of Index Fund Shares listed on the Exchange. The 80%

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<sup>15</sup> 17 CFR 270.35d-1.

Rule will act as a backstop in a manner similar to the way it does today by ensuring that there is significant overlap between the portfolio holdings of a series of Index Fund Shares that meets the Generic Listing Standards and the underlying index constituents.

Finally, the Exchange believes that deleting “or portfolio” from references to “index or portfolio” in Rules 14.11(c)(8) and 14.11(c)(9)(B)(i)(b) in order to make clear that such instances should only apply to the index underlying a series of Index Fund Shares and making a non-substantive clean-up change to Rule 14.11(c)(9)(B)(i)(b) is consistent with the Act because it is designed to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and because it is designed to make the rules of the Exchange more straight-forward and easily understandable.

For the above reasons, the Exchange believes that the proposal 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 believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would allow the portfolio holdings for a series of Index Fund Shares to be used to determine compliance with the Generic Listing Standards in addition to the index constituents, which will provide greater regulatory certainty for issuers of Index Fund Shares by providing flexibility that will allow them to continue listing on the Exchange even in the event that an underlying index narrowly fails to meet the Generic Listing Standards, which would 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 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-2018-044 Amendment No. 1 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-2018-044 Amendment No. 1.

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-2018-044 Amendment No. 1 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>16</sup>

Robert W. Errett  
Deputy Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Note: Proposed new language is underlined; proposed deletions are enclosed in [brackets].

**Rules of Cboe BZX Exchange, Inc.**

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**CHAPTER XIV. CBOE BZX EXCHANGE LISTING RULES**

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## Rule 14.11. Other Securities

(a)-(b) (No changes).

(c) Index Fund Shares

(1) Definitions. The following terms shall, unless the context otherwise requires, have the meanings herein specified:

(A)-(B) (No changes).

(C) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Index Fund Shares means the Exchange, a wholly-owned subsidiary of the Exchange, or an institution or reporting service designated by the Exchange or its subsidiary as the official source for calculating and reporting information relating to such series, including, but not limited to, any current index [or portfolio ]value; the current value of the portfolio of any securities required to be deposited in connection with issuance of Index Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Index Fund Shares, net asset value, and other information relating to the issuance, redemption or trading of Index Fund Shares.

Nothing in this paragraph shall imply that an institution or reporting service that is the source for calculating and reporting information relating to Index Fund Shares must be designated by the Exchange; the term “Reporting Authority” shall not refer to an institution or reporting service not so designated

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(8) The Exchange may list and trade Index Fund Shares based on one or more foreign or domestic indexes[ or portfolios]. Each issue of Index Fund Shares based on each particular index[ or portfolio, or combination thereof,] shall be designated as a separate series and shall be identified by a unique symbol. The

components that are included in an index or portfolio on which a series of Index Fund Shares are based shall be selected by such person, which may be the Exchange or an agent or wholly-owned subsidiary thereof, as shall have authorized use of such index or portfolio. Such index or portfolio may be revised from time to time as may be deemed necessary or appropriate to maintain the quality and character of the index or portfolio.

(9) Each series of Index Fund Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) (No changes).

(B) Continued Listing –

(i) the Exchange will consider the suspension of trading in and will initiate delisting proceedings for a series of Index Fund Shares pursuant to Rule 14.12 under any of the following circumstances:

(a) (No changes).

(b) if the value of the index[ or portfolio] of securities on which the series of Index Fund Shares is based is no longer calculated or available or an interruption to the dissemination of the value of the index[ or portfolio] of securities persists past the trading day in which it occurred or the index[ or portfolio] on which the series of Index Fund Shares is based is replaced with a new index[ or portfolio], unless the new index or portfolio meets the requirements of this Rule 14.11(c) for listing either pursuant to Rule 19b-4(e) under the Act (including the filing of a Form 19b-4(e) with the Commission) or by Commission approval of a filing pursuant to Section 19(b)(2) of the Act.

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