

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81864; File No. SR-BatsBZX-2017-61)

October 12, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Provide Interpretation with Respect to the Meaning, Administration, or Enforcement of Rule 14.11, Other Securities, and Rule 14.12, Failure to Meet Listing Standards

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2017, Bats BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 provide interpretation with respect to the meaning, administration, or enforcement of Rule 14.11 and 14.12.

The text of the proposed rule change is also available on the Exchange’s website (www.bats.com), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

On November 18, 2016 the Exchange filed a proposed rule change, as subsequently amended by Amendments No. 1 and 2 thereto (as amended, the “Continued Listing Standards”), to adopt certain changes to Exchange Rules 14.11 and 14.12 to add additional continued listing standards for exchange-traded products (“ETP”) as well as clarify the procedures that the Exchange will undertake when an ETP is noncompliant with applicable rules, which was approved by the Commission on March 7, 2017. The Exchange submits this proposal in order to provide interpretive guidance as it relates to ETP issuers complying with the changes upon implementation.

Testing and Exchange Notification

The Continued Listing Standards include language in numerous places that would require certain criteria related to index composition, portfolio holdings, or reference assets to be met “upon initial listing and on a continual basis” and that delisting proceedings will be initiated where “any of the requirements set forth in this rule are not continuously met.” As such, any instance of noncompliance reported to or discovered by the Exchange will be subject to delisting proceedings pursuant to Rule 14.12. If at any point during delisting proceedings the ETP regains compliance, such delisting proceedings will be terminated.

The Exchange notes that, unless otherwise specified within the rule text, issuers of index-based ETPs listed on the Exchange should test for compliance with such criteria upon any index

rebalance, reconstitution, or other material change to the index components (collectively, a “Material Index Change”), as applicable, and no less frequently than on a quarterly basis. Similarly, unless otherwise specified within the rule text, issuers of Managed Fund Shares, as defined in Rule 14.11(i), listed on the Exchange should test for compliance with such criteria upon any material change to the portfolio’s holdings (collectively with Material Index Change, a “Material Change”), as applicable, and no less frequently than on a quarterly basis. Any test conducted as part of a Material Change would satisfy the testing requirement for the applicable quarter. For purposes of this interpretation, the issuer may set the quarterly schedule, whether based on the fiscal year end of a fund, the calendar quarters, or otherwise. At no point should there be a period of greater than four months during which such a test for compliance has not been conducted. Nothing in this proposal should be construed as restricting the frequency with which an issuer may test for compliance. The Continued Listing Standards also include language in numerous places that would require the Exchange to initiate delisting proceedings for an ETP listed pursuant to a proposal submitted by the Exchange pursuant to Section 19(b) that has become effective or has been approved by the Commission where “any of the applicable Continued Listing Representations³ are not continuously met.” Similarly, to the extent that any Continued Listing Representations for index-based ETPs or Managed Fund Shares relate to index composition, portfolio holdings, or reference assets, issuers of ETPs listed on the Exchange should test for compliance with such criteria upon any Material Change, as applicable, and no less frequently than on a quarterly basis. The Exchange notes that it will also be

³ Pursuant to Rule 14.11(a) of the Continued Listing Standards, the term “Continued Listing Representations” shall mean any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange rules specified in any filing to list a series of Other Securities.

independently reviewing ETPs listed on the Exchange for compliance with the Continued Listing Standards.

Issuers shall provide annual attestations affirming that such tests are being conducted and that the issuer is not aware of any undisclosed instances of noncompliance. To the extent that an issuer believes that it will not be able to comply with the Continued Listing Standards, the Exchange encourages issuers to proactively reach out to the Listing Qualifications Department to work on a proposal to submit pursuant to 19(b) of the Act. If managed proactively, the Exchange believes that such issues can be managed without interruption to the listing of the ETP on the Exchange.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.⁴ In particular, the Exchange believes the proposed change furthers the objectives of Section 6(b)(5) of the Act,⁵ in that it is designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system by providing interpretations for issuers of ETPs to comply with the Continued Listing Standards. The Exchange believes that such interpretive guidance will provide issuers with the clarity needed to dedicate the resources necessary to build adequate compliance systems in furtherance of the protection of investors and the public interest.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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 purposes of the Act. The Exchange notes that the proposed rule change will facilitate ETP issuers' ability to monitor and evidence compliance with the Continued Listing Standards by providing interpretation that will provide additional clarity and certainty around the Continued Listing Standards on which issuers will be able to rely.

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

Written comments were neither solicited nor received.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(1) thereunder.⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

⁶ 15 U.S.C. 78s(b)(3)(A).

⁷ 17 CFR 240.19b-4(f)(1).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2017-61 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2017-61. 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, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you

wish to make available publicly. All submissions should refer to File Number SR-BatsBZX-2017-61 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸

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Assistant Secretary

⁸ 17 CFR 200.30-3(a)(12).