

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-84604; File No. SR-CboeBZX-2018-077)

November 15, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the JPMorgan Inflation Managed Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust under Rule 14.11(i), Managed Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 2, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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 list and trade shares of the JPMorgan Inflation Managed Bond ETF (the “Fund”) of the J.P. Morgan Exchange-Traded Fund Trust (the “Trust” or the “Issuer”) under Rule 14.11(i) (“Managed Fund Shares”). The shares of the Fund are referred to herein as the “Shares.”

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

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

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

1. Purpose

The Exchange proposes to list and trade the Shares under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.<sup>3</sup> The Fund will be an actively managed exchange-traded fund that seeks to maximize inflation protected total return. The Exchange submits this proposal in order to allow the Fund to hold Inflation Swaps and Other Derivatives, as each is defined below, in a manner that may not comply with Rule 14.11(i)(4)(C)(iv)(a),<sup>4</sup> Rule 14.11(i)(4)(C)(iv)(b),<sup>5</sup> and/or Rule 14.11(i)(4)(C)(v),<sup>6</sup> as further

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<sup>3</sup> The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100).

<sup>4</sup> Rule 14.11(i)(4)(C)(iv)(a) provides that “there shall be no limitation to the percentage of the portfolio invested in such holdings; provided, however, that in the aggregate, at least 90% of the weight of such holdings invested in futures, exchange-traded options, and listed swaps shall, on both an initial and continuing basis, consist of futures, options, and swaps for which the Exchange may obtain information via the Intermarket Surveillance Group (“ISG”) from other members or affiliates of the ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement, calculated using the aggregate gross notional value of such holdings.” The Exchange is proposing that the Fund be exempt from this requirement only as it relates to the Fund’s holdings in certain credit default swaps,

described below.<sup>7</sup> Otherwise, the Fund will comply with all other listing requirements on an initial and continued listing basis under Rule 14.11(i).

The Fund will be an actively managed fund. The Shares will be offered by the Trust, which was established as a Delaware statutory trust. J.P Morgan Investment Management, Inc. is the investment adviser (the “Adviser”) and the administrator (“Administrator”) to the Fund. JPMorgan Chase Bank, N.A. is the custodian and transfer agent (“Custodian” and “Transfer Agent,” respectively) for the Trust. JPMorgan Distribution Services, Inc. serves as the distributor

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interest rate swaps, and Inflation Swaps, as further described below.

<sup>5</sup> Rule 14.11(i)(4)(C)(iv)(b) provides that “the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).” The Exchange is proposing that the Fund would meet neither the 65% nor the 30% requirements of Rule 14.11(i)(4)(C)(iv)(b). Specifically, the Exchange is proposing that the Fund be exempt from this requirement as it relates to the Fund’s holdings in listed derivatives, which include U.S. Treasury futures, Eurodollar futures, options on U.S. Treasuries and Treasury futures, credit default swaps, and certain Inflation Swaps and interest rate swaps, as further described below, which could constitute as much as 100% of the weight of the portfolio (including gross notional exposures) based on a single underlying reference asset.

<sup>6</sup> Rule 14.11(i)(4)(C)(v) provides that “the portfolio may, on both an initial and continuing basis, hold OTC derivatives, including forwards, options, and swaps on commodities, currencies and financial instruments (e.g., stocks, fixed income, interest rates, and volatility) or a basket or index of any of the foregoing, however the aggregate gross notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).” The Exchange is proposing that the Fund be exempt from this requirement as it relates to the Fund’s holdings in OTC derivatives, which could constitute as much as 75% of the weight of the portfolio (including gross notional exposures).

<sup>7</sup> The Adviser, as defined below, notes that the Fund may by virtue of its holdings be issued certain equity instruments (“Equity Holdings”) that may not meet the requirements of Rule 14.11(i)(4)(C)(i). The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund’s shareholders. Such holdings will not constitute more than 10% of the Fund’s net assets. The Adviser expects that the Fund will generally acquire such instruments through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities.

(“Distributor”) for the Trust. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N-1A (“Registration Statement”) with the Commission.<sup>8</sup>

Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>9</sup> In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Rule 14.11(i)(7) is similar to Rule 14.11(b)(5)(A)(i),

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<sup>8</sup> See Registration Statement on Form N-1A for the Trust, dated July 31, 2018 (File Nos. 333- 191837 and 811- 22903). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) (the “Exemptive Order”). Investment Company Act Release No. 31990 (February 9, 2016) (File No. 811-22903).

<sup>9</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

however, Rule 14.11(i)(7) in connection with the establishment of a “fire wall” between the investment adviser and the broker-dealer reflects the applicable open-end fund’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain “fire walls” with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund’s portfolio. In addition, Adviser personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio. In the event that (a) the Adviser 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 Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

#### JPMorgan Inflation Managed Bond ETF

According to the Registration Statement, the Fund will be an actively managed exchange-traded fund that will seek to maximize inflation protected total return. The Fund is designed to protect the total return generated by its fixed income holdings from inflation risk. Total return includes income and capital appreciation. The Fund seeks to achieve its investment objective by

investing, under Normal Market Conditions,<sup>10</sup> at least 80% of its net assets in Bonds,<sup>11</sup> Inflation Hedging Instruments, and Other Derivatives, as defined below. The Fund will gain exposure to U.S. dollar-denominated bonds primarily through investing directly in Bonds. Up to 10% of the Fund's total assets may be invested in securities rated below investment grade (junk bonds). Junk bonds are rated in the fifth or lower rated categories (for example, BB+ or lower by Standard & Poor's Ratings Services and Ba1 or lower by Moody's). The Fund may also use the following instruments to gain exposure to credit or interest rates: credit default swaps,<sup>12</sup> interest rate

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<sup>10</sup> As defined in Rule 14.11(i)(3)(E), 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 purposes of this proposal, the term "Bond" includes only the following U.S. dollar denominated instruments issued by the U.S. Government or its agencies and instrumentalities, a domestic or a foreign corporation or a municipality: corporate bonds, U.S. government and agency debt securities (excluding Treasury Inflation Protected Securities ("TIPS"), which, as described below, may be held by the Fund in order to attempt to mitigate inflation risk), asset-backed securities, and mortgage-related and mortgage-backed securities. Mortgage-related and mortgage-backed securities may be structured as collateralized mortgage obligations (agency and non-agency), stripped mortgage-backed securities (interest-only or principal-only), commercial mortgage-backed securities, mortgage pass-through securities, collateralized mortgage obligations, adjustable rate mortgages, convertible bonds and zero-coupon obligations. The Exchange notes that the Fund's holdings in Bonds will meet the requirements of Rule 14.11(i)(4)(C)(ii)(a)-(e) related to the fixed income securities portion of the Fund, including the requirement that non-agency, non-GSE, and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The Fund will generally hold investment-grade Bonds, but may hold up to 10% of its net assets in Bonds that are not investment-grade at the time of purchase.

<sup>12</sup> See supra notes 4 and 5. Credit default swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the Commodity Futures Trading Commission. The Fund may hold up to 10% of its net assets in credit default swaps that are not investment-grade at the time of purchase.

swaps,<sup>13</sup> Eurodollar futures,<sup>14</sup> U.S. Treasury futures,<sup>15</sup> options on U.S. Treasury Futures,<sup>16</sup> and options on U.S. Treasuries<sup>17</sup> (collectively, “Other Derivatives”).

The Fund will attempt to mitigate the inflation risk of the Fund’s exposure to Bonds primarily through the use of either OTC or listed inflation swaps (“Inflation Swaps”),<sup>18</sup> which are managed on an active basis. Additionally, the Fund may also attempt to mitigate inflation risk through investing in TIPS (collectively, with Inflation Swaps, “Inflation Hedging Instruments”). The Exchange is proposing to allow the Fund to hold up to 100% of the weight of its portfolio (including gross notional exposure) in Inflation Swaps and Other Derivatives,

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<sup>13</sup> See supra notes 4, 5, and 6. Interest rate swaps held by the Fund may include listed swaps, centrally cleared OTC swaps, or non-cleared OTC swaps. The Fund will attempt to limit counterparty risk in non-listed and non-cleared OTC swap contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund’s exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund’s exposure to each counterparty on an ongoing basis. To the extent that the Fund holds listed interest rate swaps, all such listed swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the Commodity Futures Trading Commission.

<sup>14</sup> See supra note 5.

<sup>15</sup> See supra note 5.

<sup>16</sup> See supra note 5.

<sup>17</sup> See supra notes 4, 5, and 6. Options on U.S. Treasuries held by the Fund may include listed or OTC options. The Fund will attempt to limit counterparty risk in non-listed and non-cleared OTC options contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund’s exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund’s exposure to each counterparty on an ongoing basis.

<sup>18</sup> See supra notes 4, 5, and 6. The Fund will attempt to limit counterparty risk in non-listed and non-cleared OTC swap contracts by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund’s exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund’s exposure to each counterparty on an ongoing basis. To the extent that the Fund holds listed Inflation Swaps, all such listed Inflation Swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the Commodity Futures Trading Commission. Inflation Swaps held by the Fund will reference the Consumer Price Index For All Urban Consumers (CPI-U).

collectively, in a manner that may not comply with Rules 14.11(i)(4)(C)(iv)(a),<sup>19</sup>  
14.11(i)(4)(C)(iv)(b),<sup>20</sup> and/or 14.11(i)(4)(C)(v).<sup>21</sup>

The Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).<sup>22</sup> That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A). The Fund will only use those derivatives included in the defined terms Inflation Swaps and Other Derivatives. The Fund's use of derivative instruments will be collateralized. In addition to the use described above, the Fund will also use derivative holdings for efficient portfolio management, profit and gain for the Fund, interest rate hedging, and managing credit risk.

#### Other Investments

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<sup>19</sup> See supra note 4.

<sup>20</sup> See supra note 5.

<sup>21</sup> See supra note 6.

<sup>22</sup> The Fund will include appropriate risk disclosure in its 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. The Fund's investments in derivative instruments will be made in accordance with the 1940 Act and consistent with the Fund's investment objective and policies. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. 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).



Under Normal Market Conditions, the Fund may also invest up to 20% of its net assets in the following: one or more ETFs,<sup>23</sup> money market mutual funds, including affiliated money market mutual funds, bank obligations, common and preferred stock, convertible securities (including contingent convertible securities), loan assignment and participations, commitments to purchase loan assignments, auction rate securities, commercial paper, common stock warrants and rights, custodial receipts, inverse floating rate instruments, non-ETF investment company securities, securities issued by real estate investment trusts, repurchase and reverse repurchase agreements, short-term funding agreements, structured investments, synthetic variable rate instruments, trust preferred securities, when-issued securities, delayed delivery securities, forward commitments, pay-in-kind securities, and deferred payment securities (collectively, excluding ETFs, “20% OTC Instruments”). The Fund may also engage in securities lending.

The Exchange represents that, except for the exceptions to BZX Rule 14.11(i)(4)(C) described above, the Fund’s proposed investments will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(i)(4)(C) (the “Generic Listing Rules”) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i). The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Managed Fund Shares including, but not limited to, requirements relating to the dissemination of key information such as the Disclosed Portfolio, net asset value (“NAV”), and the Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and the

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<sup>23</sup> For purposes of this proposal, the term “ETF” includes Portfolio Depositary Receipts, Index Fund Shares, and Managed Fund Shares as defined in Rule 14.11(b), (c), and (i), respectively, and their equivalents on other national securities exchanges.

information circular, as set forth in Exchange rules applicable to Managed Fund Shares and the orders approving such rules. At least 100,000 Shares will be outstanding upon the commencement of trading.

Moreover, all of the ETFs, futures contracts, and listed options contracts, and certain of the Equity Holdings held by the Fund 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.<sup>24</sup> 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") and municipal securities reported to the Municipal Securities Rulemaking Board's (the "MSRB") Electronic Municipal Market Access system. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. All statements and representations made in this filing regarding 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, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund or the 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 the Fund or the Shares are

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<sup>24</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

#### Availability of Information

As noted above, the Fund will comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of exchange-traded portfolio assets, including common stock, preferred stock, warrants, rights, exchange-listed Equity Holdings, ETFs, options, and futures, will be readily available from the securities exchanges and futures exchanges trading such securities and futures, as the case may be, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on both listed and OTC swaps, TIPS, 20% OTC Instruments, and fixed income instruments are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Trade price and other information relating to Municipal Securities is available through the MSRB. Price information for cash equivalents will be available from major market data vendors. The Disclosed Portfolio will be available on the issuer's website free of charge. The Fund's website includes a form of the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Quotation and last sale information on the Shares will be available through the Consolidated Tape Association. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for listed options contracts cleared by the Options Clearing

Corporation will be available via the Options Price Reporting Authority. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening<sup>25</sup> and After Hours Trading Sessions<sup>26</sup> when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by

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<sup>25</sup> The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

<sup>26</sup> The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>27</sup> in general and Section 6(b)(5) of the Act<sup>28</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 will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) except that the Fund may not comply with Rules 14.11(i)(4)(C)(iv)(a),<sup>29</sup> 14.11(i)(4)(C)(iv)(b),<sup>30</sup> and/or

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<sup>27</sup> 15 U.S.C. 78f.

<sup>28</sup> 15 U.S.C. 78f(b)(5).

<sup>29</sup> See supra note 4.

<sup>30</sup> See supra note 5.

14.11(i)(4)(C)(v).<sup>31</sup> The Exchange believes that the liquidity in the Treasury futures,<sup>32</sup> Eurodollar futures,<sup>33</sup> and TIPS<sup>34</sup> markets mitigates the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address and that such liquidity would help prevent the Shares from being susceptible to manipulation. Further, the Exchange believes that for listed swaps, including credit default swaps, interest rate swaps, and Inflation Swaps, the price transparency and surveillance performed by the applicable swap execution facility would similarly act to mitigate the risk of manipulation of the Shares. The Exchange also believes that the size of the inflation swaps market,<sup>35</sup> which would include all of the Inflation Swaps that the Fund intends to invest in, also mitigates manipulation concerns relating to both listed and OTC Inflation Swaps held by the Fund.<sup>36</sup>

As it relates to addressing the policy concerns that Rule 14.11(i)(4)(C)(v) is intended to address, which provides that the notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures), in an effort to minimize exposure to potentially illiquid and manipulable derivatives contracts, the Exchange notes that the inflation swap market,<sup>37</sup> which would include all of the listed and OTC Inflation Swaps that the Fund

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<sup>31</sup> See supra note 6.

<sup>32</sup> In 2017, there were approximately 744 million Treasury futures contracts traded.

<sup>33</sup> In 2017, there were approximately 367 million Eurodollar futures contracts traded.

<sup>34</sup> In 2017, there were approximately \$17 billion worth of TIPS traded at primary dealers on a daily basis.

<sup>35</sup> For purposes of this discussion, the term “inflation swaps market” means any swap contract that references either a measure of inflation, an inflation index, or an instrument designed to transfer inflation risk from one party to another.

<sup>36</sup> According to publicly available numbers from LCH. Clearnet Limited, which clears both listed and OTC swaps, as of October 26, 2018, there had been approximately \$637 billion in U.S. dollar-denominated inflation swaps traded year-to-date, which would include the Inflation Swaps that the Fund intends to invest in, cleared through their platform alone.

<sup>37</sup> See supra note 35.

intends to invest in, is large and liquid, which the Exchange believes further mitigates the concerns which Rule 14.11(i)(4)(C)(v) is intended to address. The Exchange also notes that the Fund will attempt to limit counterparty risk in non-cleared OTC swap contracts, OTC Inflation Swaps, and interest rate swaps, by entering into such contracts only with counterparties the Adviser believes are creditworthy and by limiting the Fund's exposure to each counterparty. The Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis. Further, the Exchange notes that notional principal never changes hands in such swaps transactions, and it is a theoretical value used to base the exchanged payments. A more accurate representation of the swaps value in order to monitor total counterparty risk would be the mark-to market value of the swap since inception, which the Adviser generally expects to remain below 15% of the Fund's net assets.

As it relates to the requirement in Rule 14.11(i)(4)(C)(iv)(a) that at least 90% of the weight of the listed derivatives portion of the portfolio be in listed derivatives for which the Exchange may obtain information via ISG or for which the principal market is a market with which the Exchange has a comprehensive surveillance sharing agreement, 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. Additionally, all of the listed instruments that would not meet this requirement would nevertheless have a primary market that is a swap execution facility that is registered with and under the regulatory oversight of the CFTC.<sup>38</sup>

Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All of the

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<sup>38</sup> The Exchange represents that not all CFTC registered swap execution facilities are members or affiliates of members of the ISG.

futures contracts, listed options, ETFs, and certain of the listed Inflation Swaps, listed credit default swaps, Equity Holdings, and listed interest rate swaps held by the Fund 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. The Exchange, FINRA, on behalf of the Exchange, or both will communicate regarding trading in the Shares and the underlying futures contracts, listed options, ETFs, and certain of the listed Inflation Swaps, credit default swaps, Equity Holdings, and listed interest rate swaps held by the Fund with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>39</sup> The Exchange, FINRA, on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying futures contracts, listed options, ETFs, and certain of the listed Inflation Swaps, credit default swaps, Equity Holdings, and listed interest rate swaps held by the Fund via the ISG from other markets or entities who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.<sup>40</sup> Additionally, the Exchange or FINRA, on behalf of the Exchange, may access, as needed, trade information for certain fixed income instruments reported to TRACE and municipal securities reported to the MSRB. FINRA also can access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares. The Exchange has a policy prohibiting the distribution of material non-public information by its employees.

The Exchange notes that the Fund will meet and be subject to all other requirements of the Generic Listing Rules and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the Disclosed Portfolio and

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<sup>39</sup> See supra note 23 [sic].

<sup>40</sup> See supra note 23 [sic].



the requirement that the Disclosed Portfolio and the NAV will be made available to all market participants at the same time,<sup>41</sup> Intraday Indicative Value,<sup>42</sup> suspension of trading or removal,<sup>43</sup> trading halts,<sup>44</sup> disclosure,<sup>45</sup> and firewalls.<sup>46</sup> Further, at least 100,000 Shares will be outstanding upon the commencement of trading.<sup>47</sup>

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, rather will facilitate the listing and trading of an additional actively-managed exchange-traded product that will enhance competition among both market participants and listing venues, 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 up to 90 days (i) as the Commission may designate if it finds such longer

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<sup>41</sup> See Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

<sup>42</sup> See Rule 14.11(i)(4)(B)(i).

<sup>43</sup> See Rule 14.11(i)(4)(B)(iii).

<sup>44</sup> See Rule 14.11(i)(4)(B)(iv).

<sup>45</sup> See Rule 14.11(i)(6).

<sup>46</sup> See Rule 14.11(i)(7).

<sup>47</sup> See Rule 14.11(i)(4)(A)(i).

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 the 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 proposed rule change 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 Number SR-CboeBZX-2018-077 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-CboeBZX-2018-077. 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 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. 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 Number SR-CboeBZX-2018-077 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.<sup>48</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>48</sup> 17 CFR 200.30-3(a)(12).