

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85166; File No. SR-CboeBZX-2018-077)

February 19, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, 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

I. Introduction

On November 2, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the JPMorgan Inflation Managed Bond ETF (“Fund”) of the J.P. Morgan Exchange-Traded Fund Trust (“Trust”) under Rule 14.11(i) (“Managed Fund Shares”).

The proposed rule change was published for comment in the Federal Register on November 21, 2018.³ On December 10, 2018, the Exchange filed Amendment No. 1 to the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 84604 (November 15, 2018), 83 FR 58789 (“Notice”).

proposed rule change.⁴ On December 21, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comments on the proposal, as modified by Amendment No. 1. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to list and trade the Shares of the Fund pursuant to BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which was established as a Delaware statutory trust.⁶ The Fund will be an actively managed exchange-traded fund. J.P Morgan Investment Management, Inc. is the investment adviser ("Adviser") and the administrator to the Fund. JPMorgan Chase Bank, N.A. is the custodian and transfer agent for the Trust. JPMorgan Distribution Services, Inc. serves as the distributor for the Trust. The Exchange represents the Adviser is not a broker-

⁴ In Amendment No. 1, which amended and replaced the proposed rule change in its entirety, the Exchange: (a) amended the universe of Equity Holdings (as defined herein); (b) stated where intraday price quotations for Bonds (as defined herein) and Equity Holdings that are not exchange-traded could be found; (c) represented that the Equity Holdings held by the Fund that will trade on markets that are a member of Intermarket Surveillance Group ("ISG") or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement would be the exchange-listed Equity Holdings; and (d) made technical and conforming changes. Because Amendment No. 1 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues under the Act, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2018-077/srcboebzx2018077-4777675-176818.pdf>.

⁵ See Securities Exchange Act Release No. 84944, 83 FR 67751 (December 31, 2018).

⁶ The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). See Registration Statement on Form N-1A for the Trust, dated July 31, 2018 (File Nos. 333-191837 and 811-22903) ("Registration Statement"). The Exchange further represents that the Trust has obtained certain exemptive relief under the 1940 Act.

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 of, 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, non-public information regarding the Fund’s portfolio.⁷

Under the proposal, the Exchange seeks to permit the Fund to hold Inflation Swaps and Other Derivatives, each as defined below, in a manner that may not comply with BZX Rules

⁷ See BZX Rule 14.11(i)(7). The Exchange further represents that, 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 of, 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.

14.11(i)(4)(C)(iv)(a),⁸ 14.11(i)(4)(C)(iv)(b),⁹ and/or 14.11(i)(4)(C)(v),¹⁰ as further described below.¹¹ Otherwise, the Exchange represents that the Fund will comply with all other listing requirements on an initial and continued listing basis under BZX Rule 14.11(i).

⁸ BZX 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 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, interest rate swaps, and Inflation Swaps, as further described below.

⁹ BZX 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 BZX 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.

¹⁰ BZX 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).

¹¹ The Adviser notes that the Fund may by virtue of its holdings be issued certain exchange-listed or OTC equity instruments, including common and preferred stock, common stock warrants and rights, and securities issued by real estate investment trusts (collectively, “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

A. Exchange's Description of the Fund's Primary Investments¹²

According to the Exchange, the Fund is designed to protect the total return¹³ generated by its fixed income holdings from inflation risk and will seek to maximize inflation protected total return. The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,¹⁴ at least 80% of its net assets in Bonds,¹⁵ Inflation Hedging Instruments, and Other Derivatives, as defined below.

determines is in the best interest of the Fund's shareholders. Equity Holdings will not constitute more than 10% of the Fund's net assets. The Adviser expects that the Fund will generally acquire Equity Holdings through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities.

¹² The Commission notes that additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in Amendment No. 1 to the proposed rule change and the Registration Statement, as applicable. See Amendment No. 1 and Registration Statement, supra notes 4 and 6, respectively.

¹³ According to the Exchange, total return includes income and capital appreciation.

¹⁴ As defined in BZX 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.

¹⁵ 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 BZX 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 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,¹⁶ interest rate swaps,¹⁷ Eurodollar futures, U.S. Treasury futures, options on U.S. Treasury Futures, and options on U.S. Treasuries¹⁸ (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 over-the-counter ("OTC") or listed inflation swaps ("Inflation

the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio.

¹⁶ Credit default swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the Commodity Futures Trading Commission ("CFTC"). 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.

¹⁷ Interest rate swaps held by the Fund may include listed swaps, centrally cleared OTC swaps, or non-cleared OTC swaps. 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 CFTC.

¹⁸ 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 Exchange represents that the Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

Swaps”),¹⁹ which are managed on an active basis. Additionally, the Fund may also attempt to mitigate inflation risk through investing in TIPS (together with Inflation Swaps, collectively, “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, collectively, in a manner that may not comply with BZX Rules 14.11(i)(4)(C)(iv)(a),²⁰ 14.11(i)(4)(C)(iv)(b),²¹ and/or 14.11(i)(4)(C)(v).²²

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).²³ 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

¹⁹ 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 Exchange represents that 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 CFTC. Inflation Swaps held by the Fund will reference the Consumer Price Index For All Urban Consumers (CPI-U).

²⁰ See supra note 8.

²¹ See supra note 9.

²² See supra note 10.

²³ 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.

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.

B. Exchange's Description of the Fund's Other Investments

Under Normal Market Conditions, the Fund may invest up to 20% of its net assets in the following: one or more ETFs,²⁴ Equity Holdings, money market mutual funds, including affiliated money market mutual funds, bank obligations, convertible securities (including contingent convertible securities), loan assignment and participations, commitments to purchase loan assignments, auction rate securities, commercial paper, custodial receipts, inverse floating rate instruments, non-ETF investment company securities, 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 and Equity Holdings, "20% OTC Instruments"). The Fund may also engage in securities lending.

C. Exchange's Description of the Application of the Generic Listing Requirements

The Exchange represents 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 BZX Rules

²⁴ For purposes of this proposal, the term "ETF" includes Portfolio Depositary Receipts, Index Fund Shares, and Managed Fund Shares as defined in BZX Rules 14.11(b), (c), and (i), respectively, and their equivalents on other national securities exchanges.

14.11(i)(4)(C)(iv)(a),²⁵ 14.11(i)(4)(C)(iv)(b),²⁶ and 14.11(i)(4)(C)(v).²⁷ With respect to the requirement in BZX 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, the Exchange represents that 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.²⁸

The Exchange believes that the liquidity in the Treasury futures,²⁹ Eurodollar futures,³⁰ and TIPS³¹ markets mitigates the concern that BZX 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

²⁵ See supra note 8.

²⁶ See supra note 9.

²⁷ See supra note 10.

²⁸ The Exchange represents that not all CFTC registered swap execution facilities are members or affiliates of members of the ISG.

²⁹ According to the Exchange, in 2017, there were approximately 744 million Treasury futures contracts traded.

³⁰ According to the Exchange, in 2017, there were approximately 367 million Eurodollar futures contracts traded.

³¹ According to the Exchange, in 2017, there were approximately \$17 billion worth of TIPS traded at primary dealers on a daily basis.

manipulation of the Shares. The Exchange also believes that the size of the inflation swaps market,³² which would include all of the Inflation Swaps that the Fund intends to invest in, would also mitigate manipulation concerns relating to both listed and OTC Inflation Swaps held by the Fund.³³

As it relates to BZX Rule 14.11(i)(4)(C)(v), 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 swaps market, which would include all of the listed and OTC Inflation Swaps that the Fund intends to invest in, is large and liquid, which the Exchange believes further mitigates the concerns which BZX 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 Exchange also notes that 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. The Exchange believes that a more accurate representation of the swaps value in order to monitor

³² 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.

³³ 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.

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.

The Exchange represents that, except for the exceptions to BZX Rule 14.11(i)(4)(C) as 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) and all other applicable requirements for Managed Fund Shares under BZX 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, NAV, and the intraday indicative value ("IIV"), rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and the information circular, as set forth in Exchange rules applicable to Managed Fund Shares and the orders approving such rules. According to the Exchange, at least 100,000 Shares will be outstanding upon the commencement of trading.

The Exchange further represents that all of the ETFs, exchange-listed Equity Holdings, futures contracts, and listed options contracts 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.³⁴ Additionally, the Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, is 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

³⁴ For a list of the current members and affiliate members of ISG, see 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.

Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access system. FINRA may also access data obtained from the MSRB relating to municipal bond trading activity for surveillance purposes in connection with trading in the Shares.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares, as modified by Amendment No. 1, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³⁵ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,³⁶ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

As noted above, the Fund may hold up to 100% Inflation Swaps and Other Derivatives³⁷ in a manner that may not comply with the generic listing requirements in Rules 14.11(i)(4)(C)(iv)(a), 14.11(i)(4)(C)(iv)(b), and 14.11(i)(4)(C)(v).³⁸ The Exchange states that the

³⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ The Exchange states that the Fund's investments, including 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 to cover its obligations under derivative instruments.

³⁸ The Commission notes that it has previously approved other proposals to list and trade series of Managed Fund Shares based on a portfolio containing securities and instruments substantially similar to Bonds, Inflation Hedging Instruments, and Other Derivatives.

Fund will only use those derivatives included in the defined term Inflation Hedging Instruments and Other Derivatives in order to attempt to mitigate the inflation risk of the U.S. dollar-denominated bonds to which the Fund will have exposure. The Exchange states that the Fund's use of derivative instruments will be collateralized. 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, NAV, IIV, rules governing the trading of equity securities, trading hours, trading halts, surveillance, firewalls, and the information circular.

The Exchange states that the Fund's Inflation Swaps and Other Derivatives will not meet the generic listing requirement 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 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. The Exchange represents 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. The Exchange also represents that 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.³⁹

See, e.g., Securities Exchange Act Release Nos. 76719 (December 21, 2015), 80 FR 80859 (December 28, 2015) (NYSEArca-2015-73) (order approving listing and trading of the Guggenheim Total Return ETF) and 77522 (April 5, 2016), 81 FR 21420 (April 11, 2016) (NYSEArca-2015-125) (order approving listing and trading of the RiverFront Dynamic Unconstrained Income ETF and RiverFront Dynamic Core Income ETF).

³⁹ See supra note 28.

The Exchange states that the Fund's investments in Inflation Swaps and Other Derivatives will not meet the generic listing requirement 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 and that the aggregate gross notional value of listed derivatives based on any single underlying reference asset not exceed 30% of the weight of the portfolio. The Exchange states that it believes the liquidity in the Treasury futures, Eurodollar futures, and TIPS markets mitigates manipulation concerns. The Exchange further 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 states that it believes that the size of the inflation swaps market, 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.

The Exchange states that the Fund's holdings in OTC derivatives will exceed 20% of the weight of the portfolio and, therefore, not meet the generic listing requirements. The Exchange states that the Fund will attempt to limit counterparty risk in non-cleared OTC swaps and 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, and that the Adviser will monitor the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis. The Exchange states that the inflation swaps market, which would include all of the listed and OTC Inflation Swaps that the Fund intends to invest in, is large and liquid, which the Exchange believes mitigates the concerns the 20% limitation is intended to address.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act⁴⁰ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. The Exchange represents that the intraday, closing and settlement prices of exchange-traded portfolio assets, including 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, Bonds, Equity Holdings that are not exchange-listed, 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.

In addition, 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

⁴⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

options contracts cleared by the Options Clearing Corporation will be available via the Options Price Reporting Authority. Further, 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 represents that it has appropriate rules to facilitate trading in the Shares during all trading sessions.

The Exchange has made the following representations in support of its proposal:

- (1) Other than BZX Rules 14.11(i)(4)(C)(iv)(a), 14.11(i)(4)(C)(iv)(b), and 14.11(i)(4)(C)(v), the Fund will comply with all other requirements on an initial and continued listing basis for Managed Fund Shares under BZX Rule 14.11(i), including those requirements regarding the Disclosed Portfolio and the requirement that the Disclosed Portfolio and the NAV will be made available to all market participants at the same time,⁴¹ IIV,⁴² suspension of trading or removal,⁴³ trading halts,⁴⁴ disclosure,⁴⁵ and firewalls.⁴⁶
- (2) Trading of the Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and these 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.

⁴¹ See BZX Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

⁴² See BZX Rule 14.11(i)(4)(B)(i).

⁴³ See BZX Rule 14.11(i)(4)(B)(iii).

⁴⁴ See BZX Rule 14.11(i)(4)(B)(iv).

⁴⁵ See BZX Rule 14.11(i)(6).

⁴⁶ See BZX Rule 14.11(i)(7).

- (3) All of the ETFs, exchange-listed Equity Holdings, futures contracts, and listed options contracts 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. 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 TRACE and municipal securities reported to the MSRB's 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. The Exchange has a policy prohibiting the distribution of material, non-public information by its employees.
- (4) Certain of the listed Inflation Swaps, listed credit default swaps, 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 in certain of the listed Inflation Swaps, credit default swaps, 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.
- (5) 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: (a) the

- procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the IIV and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening⁴⁷ and After Hours Trading Sessions⁴⁸ when an updated IIV will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.
- (6) 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).⁴⁹
- (7) 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).
- (8) Credit default swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the CFTC. At least 90% of the Fund's net assets in credit default swaps will be investment-grade at the time of purchase.
- (9) To the extent that the Fund holds listed Inflation Swaps or interest rate swaps, all such listed Inflation Swaps and listed interest rate swaps held by the Fund will be traded on a U.S. Swap Execution Facility registered with the CFTC.

⁴⁷ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

⁴⁸ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

⁴⁹ See supra note 23.

(10) The Trust is required to comply with Rule 10A-3 under the Act⁵⁰ for the initial and continued listing of the Shares of the Fund, and at least 100,000 Shares will be outstanding upon the commencement of trading.

The Exchange represents that 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. In addition, 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 not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

This approval order is based on all of the Exchange's representations and descriptions of the Shares and the Fund, including those set forth above and in Amendment No. 1 to the proposed rule change. Except as described herein, the Commission notes that the Shares must comply with all applicable requirements of BZX Rule 14.11(i) to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 11A(a)(1)(C)(iii) of the Act⁵¹ and Section 6(b)(5) of the Act⁵² and the rules and regulations thereunder applicable to a national securities exchange.

⁵⁰ See 17 CFR 240.10A-3.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵³ that the proposed rule change (SR-CboeBZX-2018-077), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Eduardo A. Aleman
Deputy Secretary

⁵¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

⁵² 15 U.S.C. 78f(b)(5).

⁵³ 15 U.S.C. 78s(b)(2).

⁵⁴ 17 CFR 200.30-3(a)(12).