

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82388; File No. SR-BatsBZX-2017-54)

December 22, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2 Thereto, to List and Trade Shares of the iShares Inflation Hedged Corporate Bond ETF, a Series of the iShares U.S. ETF Trust, Under Rule 14.11(i), Managed Fund Shares

I. Introduction

On September 7, 2017, Bats BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade Shares (“Shares”) of the iShares Inflation Hedged Corporate Bond ETF (“Fund”) under Exchange Rule 14.11(i) (“Managed Fund Shares”). The Commission published notice of the proposed rule change in the Federal Register on September 27, 2017.³ On November 7, 2017, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer 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change.⁵ On December 8, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81671 (September 21, 2017), 82 FR 45103.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 82025, 82 FR 52763 (November 14, 2017). The Commission designated December 26, 2017, as the date by which it should approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

filed. On December 15, 2017, the Exchange withdrew Amendment No.1 and submitted Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change.⁶ The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2⁸

The Exchange proposes to list and trade Shares of the Fund under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be

⁶ In Amendment No. 2, the Exchange: (1) identified the adviser of the Fund and made certain representations relating to the adviser and its personnel, including (a) that the adviser has implemented “fire walls” with respect to its broker-dealer affiliates regarding access to information concerning the composition of and/or changes to the Fund’s portfolio; and (b) 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; (2) clarified the investment strategy and holdings of the Fund, including that (a) all listed Inflation Swaps (as defined herein) held by the Fund will be traded on a U.S. Swap Execution Facility (“SEF”) registered with the Commodity Futures Trading Commission (“CFTC”); and (b) that all total return swaps held by the Fund will be traded over-the-counter (“OTC”) and will generally reference Treasury Inflation-Protected Securities, the Consumer Price Index, or a corporate bond index; (3) represented that the Fund’s investments in derivative instruments will be made in accordance with the Investment Company Act of 1940 (“1940 Act”) and consistent with the Fund’s investment objective and policies, and that the Fund would take certain actions to mitigate and disclose leveraging risk; (4) stated that price information for cash equivalents will be available from major market data vendors; (5) provided additional justification for why the Fund’s proposed investments are consistent with the Exchange Act; (6) made additional representations regarding the ability of the Exchange to surveil trading in the Shares and certain of the underlying investments, including that the Exchange has a policy prohibiting the distribution of material non-public information by its employees; and (7) made other clarifications, corrections, and technical changes. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-batsbzx-2017-54/batsbzx201754.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ For more information regarding the Fund and the Shares, see Amendment No. 2, supra note 6.

offered by the iShares U.S. ETF Trust (“Trust”), which is registered with the Commission as an open-end investment company.⁹ BlackRock Fund Advisors (“Adviser”) will be the investment adviser to the Fund.¹⁰

According to the Exchange, the Fund will be an actively managed exchange-traded fund that seeks to mitigate the inflation risk of a portfolio with exposure to U.S. dollar-denominated investment-grade corporate bonds.

A. Fund Investments

Under Normal Market Conditions,¹¹ the Fund seeks to achieve its investment objective by investing at least 80% of its net assets in the iShares iBoxx \$ Investment Grade Corporate Bond ETF (“Underlying Fund”), in U.S. dollar-denominated investment-grade corporate bonds, in one or more other exchange-traded funds (“ETFs”) that principally invest in U.S. dollar-

⁹ The Trust is registered under the 1940 Act. The Trust has filed a registration statement on behalf of the Fund on Form N-1A with the Commission. See Registration Statement on Form N-1A for the Trust, dated April 6, 2017 (File Nos. 333-179904 and 811-22649). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Adviser under the 1940 Act. See Investment Company Act Release No. 29571 (January 24, 2011) (File No. 812-13601).

¹⁰ The Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented “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 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 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.

¹¹ The term “Normal Market Conditions” is defined in Rule 14.11(i)(3)(E).

denominated investment-grade corporate bonds,¹² and in Inflation Hedging Instruments (as defined below).

The Fund will gain exposure to U.S. dollar-denominated investment-grade corporate bonds primarily through investing in the Underlying Fund. As an alternative, the Fund may gain such exposure by investing in U.S. dollar-denominated investment-grade corporate bonds or other ETFs that are listed on a U.S. national securities exchange that principally invest in U.S. dollar-denominated investment-grade corporate bonds.

The Fund will attempt to mitigate the inflation risk of the Fund's exposure to U.S. dollar-denominated investment-grade corporate bonds primarily through the use of either OTC or listed inflation swaps (i.e., contracts in which the Fund will make fixed-rate payments based on notional amount while receiving floating-rate payments determined from an inflation index) ("Inflation Swaps"),¹³ which are managed on an active basis. As an alternative, the Fund may also attempt to mitigate inflation risk through investing in other products designed to transfer inflation risk from one party to another, including, but not limited to, Treasury Inflation-Protected Securities ("TIPS"), total return swaps,¹⁴ credit default swaps,¹⁵ and U.S. Treasury

¹² The Exchange states that for the purposes of this proposed rule change, 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.

¹³ The Exchange states that all Inflation Swaps held by the Fund will be listed and/or centrally cleared in order to reduce counterparty risk. In addition, all listed Inflation Swaps held by the Fund will be traded on a U.S. SEF registered with the CFTC.

¹⁴ All total return swaps held by the Fund will be traded OTC and will generally reference TIPS, the Consumer Price Index, or a corporate bond index. The Exchange represents that the Fund will attempt to limit counterparty risk in non-cleared 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.

futures (collectively with Inflation Swaps, “Inflation Hedging Instruments”). The Fund may hold up to 50% of the weight of its portfolio (including gross notional exposure) in Inflation Hedging Instruments.

The Fund may also hold certain fixed income securities and cash and cash equivalents in order to collateralize its derivatives positions.

B. Investment Restrictions

The Exchange represents that 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).¹⁶ 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 (e.g., 2Xs or 3Xs) of the Fund’s primary broad-based securities benchmark index (as defined in Form N-1A).

The Fund will only use those derivatives described above and included in the defined term Inflation Hedging Instruments. The Fund’s use of derivative instruments will be

¹⁵ Credit default swaps held by the Fund will be traded on a U.S. SEF registered with the CFTC.

¹⁶ 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 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 otherwise cover the transactions that give rise to such risk. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance.

collateralized. The Fund will only use derivative instruments in order to attempt to mitigate the inflation risk of the U.S. dollar-denominated investment-grade corporate bonds exposure.

C. Application of Generic Listing Standards

The Exchange proposes to list and trade the Shares under Rule 14.11(i), which provides generic listing standards for Managed Fund Shares. According to the Exchange, certain of the Fund's investments may not comply with all of the generic listing requirements of Rule 14.11(i). Specifically, the Fund will meet all the requirements of Rule 14.11(i) on an initial and ongoing basis except for those set forth in Rules 14.11(i)(4)(C)(iv)(a), 14.11(i)(4)(C)(iv)(b), and 14.11(i)(4)(C)(v).

Rule 14.11(i)(4)(C)(iv)(a) requires that, on both an initial and continuing basis, in the aggregate, at least 90% of the weight of the portfolio holdings invested in futures, exchange-traded options, and listed swaps (calculated using the aggregate gross notional value of such holdings) shall 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. The Exchange states that the Fund's investments in certain listed credit default swaps and listed Inflation Swaps will not comply with this requirement.

Rule 14.11(i)(4)(C)(iv)(b) requires 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 (including gross notional exposures). The Exchange states that the Fund's investments in listed derivatives, which include U.S. Treasury futures, credit default swaps, and certain

Inflation Swaps, will not comply with this requirement.¹⁷

Rule 14.11(i)(4)(C)(v) requires that, on both an initial and continuing basis, the aggregate gross notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures). The Exchange states that the Fund's holdings in OTC derivatives, which include total return swaps and OTC Inflation Swaps, will not comply with this requirement.

III. Proceedings to Determine Whether to Approve or Disapprove SR-BatsBZX-2017-54 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁸ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁹ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be

¹⁷ Rule 14.11(i)(4)(C)(iv)(b) also requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets not exceed 65% of the weight of the portfolio (including gross notional exposures). The Exchange states that the Fund will meet this requirement.

¹⁸ 15 U.S.C. 78s(b)(2)(B).

¹⁹ Id.

“designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,” and “to protect investors and the public interest.”²⁰

Under the proposal, the Fund may hold up to 50% of the weight of its portfolio (including gross notional exposure) in Inflation Hedging Instruments, which include, but are not limited to, TIPS, listed and OTC Inflation Swaps, OTC total return swaps, listed credit default swaps, and U.S. Treasury futures.²¹ The Commission notes that the definition of Inflation Hedging Instruments is not exhaustive and may include certain investments that are not enumerated in the filing. The Commission seeks commenters’ views on the sufficiency of the information that is provided with respect to Inflation Hedging Instruments, which could comprise up to 50% of the weight of the Fund’s portfolio, to support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended by Amendment No. 2, is consistent with Section 6(b)(5) of the Act or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²²

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See Amendment No. 2, *supra* note 6.

²² Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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. Please include File Number SR-BatsBZX-2017-54 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 Numbers SR-BatsBZX-2017-54. 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

Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-BatsBZX-2017-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman
Assistant Secretary

²³ 17 CFR 200.30-3(a)(57).