SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81191; File No. SR-BatsBZX-2017-46)

July 24, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Rule 14.11(c), Index Fund Shares, to List and Trade Shares of the Aptus Fortified Value ETF, a Series of ETF Series Solutions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 10, 2017, Bats 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 Aptus Fortified Value ETF (the "Fund"), a series of ETF Series Solutions (the "Trust"), under Rule 14.11(c) ("Index Fund Shares").

The text of the proposed rule change is available at the Exchange's website at www.bats.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the Shares under Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares on the Exchange.[3] The Fund will be an index-based exchange traded fund ("ETF"). The Exchange is submitting this proposed rule change because the Index, as defined below, does not meet all of the "generic" listing requirements of Rule 14.11(c)(3)(A)(i), applicable to the listing of Index Fund Shares based upon an index of "U.S. Component Stocks."[4] Specifically, Rule 14.11(c)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of U.S. Component Stocks. Because the Index may purchase put options on a security that tracks the broader U.S. equity market, as further described below, which are not included in the definition of "U.S. Component Stocks" as defined in Rule 14.11(c)(1)(D), the Index does not satisfy the requirements of Rule 14.11(c)(3)(A)(i). The Index will otherwise conform to the initial and continued listing criteria under Rule 14.11(c). Rule 14.11(i), which covers the listing and trading of actively managed ETFs ("Managed Fund Shares"), does however provide generic listing standards related to funds

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[3] The Commission originally approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

[4] As defined in Rule 14.11(c)(1)(D), the term "U.S. Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act, or an American Depositary receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

holding listed derivatives in Rule 14.11(i)(4)(C)(iv), which includes the kinds of options that may be held by the Index. The Exchange believes that, while the Index wouldn't necessarily meet the requirements of Rule 14.11(i)(4)(C)(iv), the listing and trading of the Shares would not give rise to the policy concerns on which the substance of Rule 14.11(i)(4)(C)(iv) is based, as further described below.

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. 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.[5]

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Aptus Fortified Value ETF

According to the Registration Statement, the Fund will seek to track the performance, before fees and expenses, of the Aptus Fortified Value Index (the "Index"). The Index is a rules-based, equal-weighted index that is designed to gain exposure to 50 of the most undervalued U.S.-listed common stocks and real estate investment trusts ("REITs"), while hedging against significant U.S. equity market declines when the market is overvalued.

The Index is composed of two components: an equity component of 50 common stocks and REITs and, when the Index determines that the U.S. equity market is overvalued, a "tail

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5 See Registration Statement on Form N-1A for the Trust, dated June 8, 2017 (File Nos. 333- 179562 and 811-22668). The descriptions of the Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

hedge" of long put options on a security that tracks the broader U.S. equity market.[6] When the tail hedge is not in effect, the Index will be composed 100% of the equity component. At the time the tail hedge is implemented, the Index will be composed 99.5% of the equity component and 0.50% of the tail hedge, as described below.

When the tail hedge is implemented, the Index will reallocate 0.50% of its weight to buy put options on a large, highly liquid ETF that tracks the performance of the large-cap U.S. equity market (the "Underlying ETF"). The Underlying ETF will be the ETF that tracks the large-cap U.S. equity market and has the highest average daily options volume as determined annually by the Index rules. A put option gives the purchaser the right to sell shares of the underlying asset at a specified price ("strike price") prior to a specified date ("expiration date"). The purchaser pays a cost (premium) to purchase the put option. In the event the underlying asset declines in value, the value of the put option will generally increase, and in the event the underlying asset appreciates in value, the put option may end up worthless and the premium may be lost.

At the time the tail hedge is implemented, the put options on the Underlying ETF will have an expiration date of approximately three months from the date the tail hedge is implemented, and the strike price will be approximately 30% less than the most recent closing price of the Underlying ETF.

On the last business day of each month, any options held by the Index are sold. If the tail hedge will not be in effect for the following month, the weight of such options, if any, will be reallocated pro rata to the securities in the Index's equity component. If the tail hedge will continue in effect for the following month, the Index is rebalanced (i.e., no equity securities are

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6 The Exchange notes that the equity component of the Index meets the requirements of Rule 14.11(c)(3)(A)(i).

added or deleted) such that the tail hedge (with new options purchased) has a weight of 0.50% and the equity component securities are adjusted up or down pro rata to have a weight of 99.5%.[7]

The Exchange represents that, except for the 0.50% options position that the Index might hold, the Index will satisfy, on an initial and continued listing basis, all of the generic listing standards under Rule 14.11(c)(3)(A)(i) and all other applicable requirements for Index Fund Shares under Rule 14.11(c), including, but not limited to, requirements relating to the dissemination of key information such as the Net Asset Value, the Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules. Moreover, all of the equity securities and options contracts held by the Index 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.[8] All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c)

[7] This calculation is based on the cost to purchase the put contracts. While the Index would not necessarily meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) applicable to options holdings for Managed Fund Shares, which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures), the actual potential downside associated with purchased put contracts is limited to the cost of the contract. The Exchange believes that this, combined with the relatively small percentage of the Index's exposure to options on the Underlying ETF and the liquidity in the options market for the Underlying ETF mitigates the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address and would prevent the Shares from being susceptible to manipulation.

[8] 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.

the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. 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 Exchange Rule 14.12.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[9] in general and Section 6(b)(5) of the Act[10] 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(c) with the exception of

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

the possible 0.50% of assets used to purchase put options.[11] While the Index would not necessarily meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) applicable to options holdings for Managed Fund Shares, which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures), the actual potential downside associated with purchased put contracts is limited to the cost of the contract. The Exchange believes that this, combined with the relatively small percentage of the Index's exposure to options on the Underlying ETF and the liquidity in the options market for the Underlying ETF mitigates the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address and would prevent the Shares from being susceptible to manipulation. 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. All of the futures 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. The Exchange may obtain information regarding trading in the Shares and the underlying equities and options contracts held by the Fund via the ISG from other exchanges who are members or affiliates of the ISG or with which

11 As noted above, the Exchange is proposing that the Fund be exempt from the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).

the Exchange has entered into a comprehensive surveillance sharing agreement.[12] The Exchange further notes that the Fund will meet and be subject to all other requirements of Rule 14.11(c) and other applicable continued [sic] Net Asset Value, the Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

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 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

[12] See note 11, supra.

period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-BatsBZX-2017-46 on the subject line.

Paper Comments:

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

All submissions should refer to File No. SR-BatsBZX-2017-46. 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 such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BatsBZX-2017-46 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.[13]

Eduardo A. Aleman
Assistant Secretary

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[13] 17 CFR 200.30-3(a)(12).