

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81815; File No. SR-BatsBZX-2017-58)

October 4, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the CBOE S&P 500[®] Dividend Aristocrats[®] Target Income Index ETF under the ETF Series Solutions Trust, Under Rule 14.11(c)(3), Index Fund Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 19, 2017, Bats BZX Exchange, Inc. (the “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 CBOE S&P 500[®] Dividend Aristocrats[®] Target Income Index ETF under the ETF Series Solutions Trust (the “Trust”), under Rule 14.11(c)(3) (“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 shares (“Shares”) of CBOE S&P 500[®] Dividend Aristocrats[®] Target Income Index ETF (the “Fund”) under Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares on the Exchange. The Fund will be an index-based exchange traded fund (“ETF”). The Fund will track the CBOE S&P 500[®] Dividend Aristocrats[®] Target Income Index (the “Index”).

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 plans to file a registration statement on behalf of the Fund on Form N-1A with the Commission.³ The Fund’s index provider, Chicago Board Options Exchange (“CBOE” or the “Index Provider”), is not a broker-dealer, but is affiliated with a broker-dealer. The Exchange also notes that the adviser, CBOE Vest Financial, LLC, is a BZX Affiliate as defined in Rule 14.3(e)(1)(A),⁴ but is not an Affiliate Security, as defined in Rule

³ While the Trust has not yet filed a registration statement on behalf of the Fund, the Exchange will not allow the Fund to list and trade on the Exchange until the registration statement for the Fund is effective.

⁴ As defined in Rule 14.3(e)(1)(A), the term “BZX Affiliate” means the Exchange and any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the Exchange, where “control” means that one entity possesses, directly or indirectly, voting control of the other entity either through ownership of capital stock or other equity securities or through majority representation on the board of directors or other management body of such entity.

14.11(e)(1)(B),⁵ and is therefore not subject to the additional requirements applicable to Affiliate Securities because such definition explicitly excludes Index Fund Shares. The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Exchange is submitting this proposed rule change because the Index 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.”⁶ 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 includes derivatives, rather than exclusively holding “U.S. Component Stocks” as defined in Rule 14.11(c)(1)(D), it does not satisfy the requirements of Rule 14.11(c)(3)(A)(i).⁷

The Shares will conform to the initial and continued listing criteria under Rule 14.11(c), except that the Index will not meet the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e) in that the

⁵ As defined in Rule 14.3(e)(1)(B), the term “Affiliate Security” means any security issued by a BZX Affiliate or any Exchange-listed option on any such security, with the exception of Portfolio Depository Receipts as defined in Rule 14.11(b) and Index Fund Shares as defined in Rule 14.11(c).

⁶ 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 Depository Receipt, the underlying equity security of which is registered under Sections 12(b) or 12(g) of the Act.

⁷ Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Each component stock of the S&P 500 is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock. Options are excluded from the definition of NMS Stock. The Fund and the Index meet all of the requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3), except the requirements in Rule 14.11(c)(3)(A)(i)(a)-(e), as the Index consists of options on U.S. Component Stocks. The S&P 500 consists of U.S. Component Stocks and satisfies the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e).

Index will be composed of U.S. Component Stocks and options based on U.S. Component Stocks (i.e., FLEX Options and/or standardized options that reference a single U.S. Component Stock), rather than exclusively holding U.S. Component Stocks.

The Fund uses a “passive management” (or indexing) approach to track the total return performance, before fees and expenses, of the CBOE S&P 500[®] Dividend Aristocrats[®] Target Income Index (the “Index” for purposes of this section). The Index is a rules-based buy-write index created by the Index Provider, an affiliate of the Fund’s investment adviser, and designed with the primary goal of generating an annualized level of income that is approximately 3.5% over the annual dividend yield of the S&P 500 Index and a secondary goal of generating price returns that are proportional to the price returns of the S&P 500 Index.

The Index is composed of two parts: (1) an equal-weighted portfolio of the stocks contained in the S&P 500 Dividend Aristocrats Index (the “Aristocrat Stocks”) that have options that trade on a national securities exchange and (2) a rolling series of short call options on each of the Aristocrat Stocks (the “Covered Calls”). The S&P 500 Dividend Aristocrats Index generally includes companies in the S&P 500 Index that have increased dividend payments each year for at least 25 consecutive years and meet certain market capitalization and liquidity requirements.

The Covered Calls are written (sold)⁸ on the last trading day of each week with an expiration typically on the Friday of the following week and a strike price as close as possible to the closing price of the underlying Aristocrat Stock at the time the Covered Call is written. The

⁸ The Index is a hypothetical portfolio of options and equity securities. As such, the Index cannot actually buy or sell an option or equity security, but the Index reflects the value of such transactions as if the Index could actually engage in them. The Index is described as “buying” and “selling” options to aid investors in understanding how the Fund will act in tracking the Index.

Index employs a “partial covered call strategy,” meaning that Covered Calls will be written on a notional value of no more than 20% of the value of the underlying Aristocrat Stock, such that the short position in the call option is “covered” by a portion of the long underlying asset. The exact amount of Covered Calls written is based on a calculation designed to result in the Index generating a total yield from (i) dividends from the Aristocrat Stocks and (ii) premiums from writing Covered Calls that is 3.5% higher annually than the yield from dividends of the S&P 500 Index constituents.

The equity component of the Index is rebalanced (i.e., weights are reset to equal-weighted) quarterly effective after the close of the last business day of each January, April, July, and October and reconstituted (i.e., Aristocrat Stocks are added and deleted according to the Index rules) annually effective after the close of the last business day of each January.

The Fund attempts to invest all, or substantially all, of its assets in the component securities that make up the Index. Under Normal Market Conditions,⁹ at least 80% of the Fund’s total assets (exclusive of any collateral held from securities lending) will be invested in the component securities of the Index. The Fund will hold only U.S. exchange-listed equity securities, FLEX and/or standardized exchange-listed options on exchange-listed equity securities, FLEX and/or standardized exchange-listed options on U.S. equity indexes, and cash and cash equivalents.¹⁰

⁹ 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.

¹⁰ As defined in Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities,

The Exchange notes that, while the Fund will be a series of Index Fund Shares listed on the Exchange under Rule 14.11(c), the Fund will meet the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i), which would allow a series of Managed Fund Shares with the exact same holdings as the Fund to list on the Exchange without requiring the submission and SEC approval of a rule filing pursuant to Section 19(b)(2) of the Act. While Index Fund Shares track the value of an index and Managed Fund Shares are based on an actively managed portfolio and are not generally designed to track an underlying reference asset, the Exchange believes that there are no substantive issues that are unique to Index Fund Shares that were not considered in the Commission's approval of the generic listing rules for Managed Fund Shares.¹¹ As such, the Exchange believes that this proposal similarly does not raise any substantive issues that were not otherwise addressed in the Commission's approval of the generic listing rules for Managed Fund Shares and that the Commission should act expeditiously to approve this proposal.

In addition, the Exchange represents that, except as described above, the Fund will meet each of the initial and continued listing criteria in BZX Rule 14.11(c) with the exception Rule

including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

¹¹ 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).

14.11(c)(3)(A)(i), applicable to the listing of Index Fund Shares based upon an index of “U.S. Component Stocks.” 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 Index Fund Shares including, but not limited to, requirements relating to the dissemination of key information such as the Disclosed Portfolio, Net Asset Value, and 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 options contracts held by the Fund 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.¹² All statements and representations made in this filing regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, 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

¹² 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.

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 Act¹³ in general and Section 6(b)(5) of the Act¹⁴ 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 of the Fund will meet each of the initial and continued listing criteria in BZX Rule 14.11(c) with the exception Rule 14.11(c)(3)(A)(i), applicable to the listing of Index Fund Shares based upon an index of “U.S. Component Stocks.” 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 contains options, rather than exclusively containing “U.S. Component Stocks” as defined in Rule 14.11(c)(1)(D), the Index does not satisfy the requirements of Rule

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(5).

14.11(c)(3)(A)(i),¹⁵ however, the generic listing rules for Managed Fund Shares do allow for a portfolio to hold listed derivatives. The Exchange notes that, while the Fund will be a series of Index Fund Shares listed on the Exchange under Rule 14.11(c), the Fund will comply with the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i) that would allow a series of Managed Fund Shares with the exact same holdings as are included in both the Index and the Fund to list on the Exchange without requiring the submission and SEC approval of a rule filing pursuant to Section 19(b)(2) of the Act. While Index Fund Shares track the value of an index and Managed Fund Shares are based on an actively managed portfolio and are not generally designed to track an underlying reference asset, the Exchange believes that there are no substantive issues that are unique to Index Fund Shares that were not considered in the Commission's approval of the generic listing rules for Managed Fund Shares. As such, the Exchange believes that this proposal similarly does not raise any substantive issues that were not otherwise addressed in the Commission's approval of the generic listing rules for Managed Fund Shares and that the Commission should act expeditiously to approve this proposal.

The Exchange also represents that, except as described above, the Fund will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(c)(3)(A)(i) and all other applicable requirements for Index Fund Shares under Rule 14.11(c). 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 Index Fund Shares including, but not limited to, requirements relating to the dissemination of key information such as the

¹⁵ Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act.

Disclosed Portfolio, Net Asset Value, and 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 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.¹⁶ All statements and representations made in this filing regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, 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 not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

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

¹⁶ 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.

Exchange notes that the proposed rule change will facilitate the listing and trading of an additional type of Index Fund Shares that will enhance competition among market participants, 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 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-2017-58 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-2017-58. 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-2017-58 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).