

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 82476; File No. SR-BATSBZX-2017-58)

January 9, 2018

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to List and Trade Shares of the Cboe Vest S&P 500[®] Dividend Aristocrats[®] Target Income Index ETF under the ETF Series Solutions Trust Under Rule 14.11(c)(3)

I. Introduction

On September 19, 2017, Bats 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” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of the Cboe Vest S&P 500[®] Dividend Aristocrats[®] Target Income Index ETF (“Fund”) under the ETF Series Solutions Trust (“Trust”). The proposed rule change was published for comment in the Federal Register on October 11, 2017.³ On November 17, 2017, pursuant to Section 19(b)(2) of the 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 29, 2017, the Exchange filed Amendment No. 1 to the proposed rule change. On January 2, 2018, the Exchange filed Amendment No. 2 to the proposed rule change,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81815 (October 4, 2017), 82 FR 47265.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 82115, 82 FR 55891 (November 24, 2017). The Commission designated January 9, 2018, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

which replaced the original filing, as amended by Amendment No. 1, in its entirety.⁶ The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposal⁷

The Exchange proposes to list and trade the Shares pursuant to its Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares on the Exchange.⁸ The Shares do not qualify for generic listing because the index underlying the Shares includes derivatives, rather than consisting exclusively of “U.S. Component Stocks” (as defined in BZX Rule

⁶ In Amendment No. 2, the Exchange: (1) updated information regarding the Fund’s registration statement; (2) made representations regarding the fire walls to be implemented by the Fund’s adviser and the provider of the underlying index; (3) disclosed the investment objective of the Fund; (4) provided additional information regarding the underlying index; (5) supplemented its description of the Fund’s permitted investments; (6) described the availability of price information for the Shares and the Fund’s permitted investments; (7) made certain representations regarding surveillance; (8) represented that the Fund’s portfolio holdings will be disclosed daily on the issuer’s website; (9) stated that the Exchange deems the Shares to be equity securities; (10) disclosed the minimum number of Shares that will be outstanding at the commencement of trading; (11) identified circumstances in which trading in the Shares may and will be halted; and (12) made other technical amendments. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-batsbzx-2017-58/batsbzx201758-2869571-161745.pdf>. Because Amendment No. 2 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

⁷ Additional information regarding the Trust, the Fund, the underlying index, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings, disclosure policies, calculation of the NAV, distributions, and taxes, among other things, can be found in Amendment No. 2, supra note 6, and the Registration Statement, infra note 8.

⁸ According to the Exchange, the Trust filed with the Commission a registration statement on Form N-1A under the Securities Act of 1933 relating to the Fund (File Nos. 333-179562 and 811-22668) (“Registration Statement”). According to the Exchange, the Commission has not yet issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) applicable to the activities of the Fund. The Exchange represents that the Fund will not be listed on the Exchange until such an order is issued and any conditions contained therein are satisfied.

14.11(c)(1)(D)) or “U.S. Component Stocks and cash,” as required by BZX Rule

14.11(c)(3)(A)(i).

The Funds’ adviser, Cboe Vest Financial, LLC (the “Adviser”), and index provider, Chicago Board Options Exchange (“Cboe Options” or the “Index Provider”), are not registered as broker-dealers, but are affiliated with a broker-dealer. The Index Provider has implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the Index (as defined below). In addition, Index Provider personnel who make decisions regarding the Index composition or methodology are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Index, pursuant to BZX Rule 14.11(c)(3)(B)(iii). The Adviser has also implemented and will maintain a “fire wall” with respect to such broker-dealer and its personnel regarding access to information concerning the composition and/or changes to the portfolio. In addition, Adviser personnel who make decisions regarding a Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding a 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 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.

A. The Index

The Fund will track the Cboe S&P 500[®] Dividend Aristocrats[®] Target Income Index (“Index”). The Index is composed of two parts: (1) an equal-weighted portfolio of the stocks contained in the S&P 500 Dividend Aristocrats Index⁹ (“Aristocrat Stocks”) that have options that trade on a national securities exchange; and (2) a rolling series of short weekly or monthly call options on each of the Aristocrat Stocks (“Covered Calls”).¹⁰ 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.

B. The Fund’s Principal Investments

The Fund would invest all, or substantially all, of its assets in the component securities that make up the Index. Under Normal Market Conditions,¹¹ 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 options listed on a U.S. national securities exchange overlying other exchange-listed equity securities or U.S equity indexes; standardized options listed on a U.S. national securities exchange overlying exchange-listed equity securities or U.S. equity indexes; cash; and cash equivalents.

⁹ According to the Exchange, there are currently 51 stocks in the Index and at each annual reconstitution the minimum number of constituent stocks is 40.

¹⁰ 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.

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

C. The Fund's Non-Principal Investments

The Fund would hold up to 20% of its assets in instruments that are not included in the Index, including only the following: U.S. exchange-listed ETFs that provide broad-based exposure to US large cap stocks, U.S. exchange-listed FLEX and/or U.S. exchange-listed standardized options on such ETFs, U.S. exchange-listed FLEX and/or U.S. exchange-listed standardized options on the S&P 500 Index, and cash and cash equivalents.¹²

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares, as modified by Amendment No. 2, is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,¹⁴ which sets forth Congress's 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. According to the Exchange,

¹² For purposes of this proposal, cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, 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.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C)(iii).

quotation and last-sale information for the Shares will be available through the Consolidated Tape Association, and information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers.

The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,¹⁵ 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. The Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately.

The Exchange deems the Shares to be equity securities,¹⁶ and therefore trading in the Shares will be subject to the Exchange's existing rules governing the trading of equity securities. The Exchange represents that the Shares and the Index will satisfy, on an initial and continued listing basis, all of the generic listing standards other than BZX Rule 14.11(c)(3)(A)(i), and will satisfy all other applicable requirements for Index Fund Shares under BZX Rule 14.11(c).

The Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.¹⁷ Further, an Intraday Indicative Value for the Shares, updated at least every 15 seconds, will be disseminated during

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See Amendment No. 2, *supra* note 6, at 11.

¹⁷ See BZX Rule 14.11(c)(3)(B)(ii)(a). The Exchange's "Regular Trading Hours" are between 9:30 a.m. and 4:00 p.m. Eastern Time. See BZX Rule 1.5(w).

the Exchange's Regular Trading Hours.¹⁸ The portfolio of instruments held by the Fund will be disclosed daily on the Fund's website.¹⁹

Quotation and last sale information for standardized options will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from the listing exchange. Last-sale information for FLEX Options will be available via the Options Price Reporting Authority. The intra-day, closing and settlement prices of exchange-traded options (both standardized and FLEX Options) will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on Treasury bills and other cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

The Commission also believes that the proposal is designed to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. Similarly, trading in the Shares will be halted where there is an interruption to the Intraday Indicative Value being disseminated at least every 15 seconds during Regular Trading Hours and such interruption persists past the trading day in which it occurred.²⁰ The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and made available to all market participants at the same time.²¹ If the

¹⁸ See BZX Rule 14.11(c)(3)(C).

¹⁹ See BZX Rule 14.11(c)(1)(B)(iv).

²⁰ See Amendment No. 2, supra note 6, at 11.

²¹ See BZX Rule 14.11(c)(9)(A)(ii).

Exchange becomes aware that the NAV for the Shares is not being disseminated to all market participants at the same time or the daily public website disclosure of portfolio holdings does not occur, the Exchange shall halt trading in the Shares.²²

To support this proposal, the Exchange has made the following representations:

- (1) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.²³
- (2) The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. The Exchange is also able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine. The Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.²⁴
- (3) All of the instruments held by the Fund, other than cash equivalents, will be U.S. exchange-listed and will trade on markets that are a member of the ISG or

²² See BZX Rule 14.11(c)(1)(b)(iv).

²³ See Amendment No. 2, supra note 6, at 11.

²⁴ See id. at 11-12.

affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁵

- (4) For initial and continued listing, the Fund must be in compliance with Rule 10A-3 under the Exchange Act.²⁶
- (5) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.²⁷
- (6) The Fund will not be listed on the Exchange until the Commission has issued an order granting exemptive relief to the Trust under the Investment Company Act of 1940 applicable to the activities of the Fund and any conditions contained therein are satisfied.²⁸

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

²⁵ See id. at 10, 15.

²⁶ See id. at 11.

²⁷ See id.

²⁸ See id. at 4 n.3.

delisting procedures under BZX Rule 14.12. This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act²⁹ and Section 11A(a)(1)(C)(iii) of the Exchange Act³⁰ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,³¹ that the proposed rule change (SR-BATSBZX-2017-58), as modified by Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman
Assistant Secretary

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³¹ 15 U.S.C. 78s(b)(2).

³² 17 CFR 200.30-3(a)(12).