

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83679; File No. SR-BatsBZX-2017-72)

July 20, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4 Thereto, to List and Trade Shares of the Innovator S&P 500 Buffer ETF Series, Innovator S&P 500 Power Buffer ETF Series, and Innovator S&P 500 Ultra Buffer ETF Series Under Rule 14.11(i)

I. Introduction

On November 7, 2017, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”), formerly known as Bats BZX Exchange, Inc., filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to list and trade shares of the Innovator S&P 500 Buffer ETF Series (formerly known both as the Innovator S&P 500 Enhance and Buffer ETF Series and Innovator S&P 500 Enhance and 10% Shield Strategy ETF Series), Innovator S&P 500 Power Buffer ETF Series (formerly known as both the Innovator S&P 500 Buffer ETF Series and Innovator S&P 500 15% Shield Strategy ETF Series), and Innovator S&P 500 Ultra Buffer ETF Series (formerly known as both the Innovator S&P 500 Power Buffer ETF Series and Innovator S&P 500 -5% to -35% Shield Strategy ETF Series) under BZX Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on November 22, 2017.⁴ On December 21, 2017, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 82097 (November 16, 2017), 82 FR 55689.

to determine whether to approve or disapprove the proposed rule change.⁵ On February 20, 2018, the Commission initiated proceedings to determine whether to disapprove the proposed rule change.⁶ On April 4, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed. On July 12, 2018, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 1, as well as Amendment No. 3 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 2. On July 18, 2018, the Exchange filed Amendment No. 4 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 3.⁷ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 4 from interested persons and is approving the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 4

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 proposed rule change. The text of these statements may be examined at the places specified in

⁵ See Securities Exchange Act Release No. 82387, 82 FR 61613 (December 28, 2017) (extending the time period to February 20, 2018).

⁶ See Securities Exchange Act Release No. 82739, 83 FR 8309 (February 26, 2018).

⁷ The amendments to the proposed rule change are available at: <https://www.sec.gov/comments/sr-batsbzx-2017-72/batsbzx201772.htm>. In Amendment No. 4, the Exchange (among other things) narrowed the scope of the proposed rule change to withdraw its request to list and trade shares of the Innovator S&P 500 Ultra ETF Series (formerly known as the Innovator S&P 500 Ultra Strategy ETF Series).

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

This Amendment No. 4 to SR-BatsBZX-2017-72 amends and replaces in its entirety the third amended proposal submitted on July 12, 2018. The Exchange submits this Amendment No. 4 in order to revise certain details regarding the Funds.

The Exchange proposes to list and trade shares (“Shares”) of up to twelve monthly Innovator S&P 500 Buffer ETF Series (collectively, the “Buffer Funds”), Innovator S&P 500 Power Buffer ETF Series (collectively, the “Power Buffer Funds”), and Innovator S&P 500 Ultra Buffer ETF Series (collectively, the “Ultra Buffer Funds”) (each a “Fund” and, collectively, the “Funds”) under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.⁸ Each Fund will be an actively managed exchange traded fund (“ETF”).

The Shares will be offered by Innovator ETFs Trust (formerly Academy Funds Trust) (the “Trust”), which was established as a Delaware statutory trust on October 17, 2007. The Trust is registered with the Commission as an investment company and has filed, for each Fund, a registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of the Funds.⁹ Each Fund intends to qualify each year as a regulated investment company

⁸ 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).

⁹ See Post-Effective Amendment Nos. 149,150, and 151 to Registration Statement on Form N-1A for the Trust, which were filed with the Commission on July 12, 2018 (File Nos. 333-146827 and 811-22135). The descriptions of the Funds and the Shares contained

(a “RIC”) under Subchapter M of the Internal Revenue Code of 1986, as amended.¹⁰ Innovator Capital Management, LLC (the “Adviser”) is the investment adviser to the Funds and Milliman Financial Risk Management LLC (the “Sub-Adviser”) is the sub-adviser. Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.¹¹ In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer, and neither the

herein are based on information in the Registration Statement. There are no permissible holdings for the Funds that are not described in this proposal. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 32854 (October 6, 2017) (File No. 812-14781).

¹⁰ 26 U.S.C. 851.

¹¹ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

Adviser nor the Sub-Adviser are affiliated with broker-dealers. In addition, Adviser and Sub-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 the Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a 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 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. Similarly, to the extent that a Fund is based on a benchmark index, in the event that the index provider of the benchmark index (the "Index Provider") becomes registered as a broker-dealer or newly 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 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.

The investment objective of the Funds is to provide investors with returns that match those of the S&P 500 Price Return Index (the "S&P 500 Index") over a period of approximately one year, while providing a level of protection from S&P 500 Index losses.

The Funds are each actively managed funds that employ a "defined outcome strategy" that:

(1) for the Buffer Funds, seeks to provide investment returns that match the gains of the S&P 500 Index, up to a maximized annual return (the “Buffer Cap Level”), while guarding against a decline in the S&P 500 Index of the first 10% (the “Buffer Strategy”);

(2) for the Power Buffer Funds, seeks to provide investment returns that match the gains of the S&P 500 Index, up to a maximized annual return (the “Power Buffer Cap Level”), while guarding against a decline in the S&P 500 Index of the first 15% (the “Power Buffer Strategy”); and

(3) for the Ultra Buffer Funds, seeks to provide investment returns that match the gains of the S&P 500 Index, up to a maximized annual return (the “Ultra Buffer Cap Level”), while guarding against a decline in the S&P 500 Index of between 5% and 35% (the “Ultra Buffer Strategy”).

Pursuant to the Strategies, each Fund will invest primarily in exchange-traded options contracts that reference either the S&P 500 Index or ETFs that track the S&P 500 Index. Defined outcome strategies are designed to participate in market gains and losses within pre-determined ranges over a specified period (i.e. point to point). These outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. As such, the Exchange is proposing to list up to twelve monthly series of each of the Buffer Funds, Power Buffer Funds and Ultra Buffer Funds, as named above.

The Exchange submits this proposal in order to allow each Fund to hold listed derivatives, in particular FLEXible EXchange Options (“FLEX Options”) on the S&P 500 Index, in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b).¹² Otherwise, the Funds will

¹² 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

comply with all other listing requirements of the Generic Listing Standards¹³ for Managed Fund Shares on an initial and continued listing basis under Rule 14.11(i).

Innovator S&P 500 Buffer ETF Series

Under Normal Market Conditions¹⁴, each Buffer Fund will attempt to achieve its investment objective by employing a “defined outcome strategy” that will seek to provide investment returns during the outcome period that match the gains of the S&P 500 Index, up to the Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 10%. Pursuant to the Buffer Strategy, each Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the S&P 500 Index, that, when held for the specified period, seeks to produce returns that, over the outcome period, match the positive returns of the S&P 500 Index up to the

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 Funds do not meet the generic listing standards because they fail to meet 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 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 (including gross notional exposures).

¹³ For purposes of this proposal, the term “Generic Listing Standards” shall mean the generic listing rules for Managed Fund Shares under Rule 14.11(i)(4)(C).

¹⁴ 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.

Buffer Cap Level. Pursuant to the Buffer Strategy, each Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: the Buffer Fund will seek to provide shareholders with a total return that matches that of the S&P 500 Index, up to and including the Buffer Cap Level;
- If the S&P 500 Index depreciates over the outcome period by 10% or less: the Buffer Fund will seek to provide a total return of zero;
- If the S&P 500 Index decreases over the outcome period by more than 10%: the Buffer Fund will seek to provide a total return loss that is 10% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 90%.

The Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising a Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by a Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Buffer Fund to create the right to buy or sell the same asset such that the Buffer Fund will always be in a net long position. That is, any obligations of a Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options

annually, each Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year. The Buffer Funds do not offer any protection against declines in the S&P 500 Index exceeding 10% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 10% on a one-to-one basis.

The FLEX Options owned by each of the Buffer Funds will have the same terms (i.e. same strike price and expiration) for all investors of a Buffer Fund within an outcome period. The Buffer Cap Level will be determined with respect to each Buffer Fund on the inception date of the Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Buffer Fund at that time.

Innovator S&P 500 Power Buffer ETF Series

Under Normal Market Conditions, each Power Buffer Fund will attempt to achieve its investment objective by employing a “defined outcome strategy” that will seek to provide investment returns during the outcome period that match the gains of the S&P 500 Index, up to the Power Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 15%. Pursuant to the Power Buffer Strategy, each Power Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the S&P 500 Index, that, when held for the specified period, seeks to produce returns that, over the outcome period, match the positive returns of the S&P 500 Index up to the Power Buffer Cap Level. Pursuant to the Power Buffer Strategy, each Power Buffer Fund’s portfolio managers will seek to produce the following outcomes during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: the Power Buffer Fund will seek to provide shareholders with a total return that matches that of the S&P 500 Index, up to and including the Power Buffer Cap Level;
- If the S&P 500 Index depreciates over the outcome period by 15% or less: the Power Buffer Fund will seek to provide a total return of zero; and
- If the S&P 500 Index decreases over the outcome period by more than 15%: the Power Buffer Fund will seek to provide a total return loss that is 15% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 85%.

The Power Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising a Power Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by a Power Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Power Buffer Fund to create the right to buy or sell the same asset such that the Power Buffer Fund will always be in a net long position. That is, any obligations of a Power Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Power Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500

Index up to pre-determined levels in that same month of the following year. The Power Buffer Funds do not offer any protection against declines in the S&P 500 Index exceeding 15% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 15% on a one-to-one basis.

The FLEX Options owned by each of the Power Buffer Funds will have the same terms (i.e. same strike price and expiration) for all investors of a Power Buffer Fund within an outcome period. The Power Buffer Cap Level will be determined with respect to each Power Buffer Fund on the inception date of the Power Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Power Buffer Fund at that time.

Innovator S&P 500 Ultra Buffer ETF Series

Under Normal Market Conditions, each Ultra Buffer Fund will attempt to achieve its investment objective by employing a “defined outcome strategy” that will seek to provide investment returns during the outcome period that match the gains of the S&P 500 Index, up to the Ultra Buffer Cap Level, while shielding investors from S&P 500 Index losses of between 5% and 35%. Pursuant to the Ultra Buffer Strategy, each Ultra Buffer Fund will invest primarily in FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of FLEX Options linked to an underlying asset, the S&P 500 Index, that, when held for the specified period, seeks to produce returns that, over the outcome period, match the positive returns of the S&P 500 Index up to the Ultra Buffer Cap Level. Pursuant to the Ultra Buffer Strategy, each Ultra Buffer Fund’s portfolio managers will seek to produce the following outcomes during the outcome period:

- If the S&P 500 Index appreciates over the outcome period: the Ultra Buffer Fund will seek to provide a total return that matches the percentage increase of the S&P 500 Index, up to the Ultra Buffer Cap Level;
- If the S&P 500 Index decreases over the outcome period by 5% or less: the Ultra Buffer Fund will seek to provide a total return loss that is equal to the percentage loss on the S&P 500 Index;
- If the S&P 500 Index decreases over the outcome period by 5%-35%: the Ultra Buffer Fund will seek to provide a total return loss of 5%; and
- If the S&P 500 Index depreciates over the outcome period by greater than 35%: the Ultra Buffer Fund will seek to provide a total return loss that is 30% less than the percentage loss on the S&P 500 Index with a maximum loss of approximately 70%.

The Ultra Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired defined outcome parameters. The FLEX Options comprising an Ultra Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of the S&P 500 Index. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by an Ultra Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Buffer Fund to create the right to buy or sell the same asset such that the Ultra Buffer Fund will always be in a net long position. That is, any obligations of an Ultra Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. As

the FLEX Options mature at the end of each outcome period, they are replaced. By replacing FLEX Options annually, each Ultra Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of the S&P 500 Index up to pre-determined levels in that same month of the following year. The Ultra Buffer Funds do not offer any protection against declines in the S&P 500 Index exceeding 35% on an annualized basis. Shareholders will bear all S&P 500 Index losses exceeding 35% on a one-to-one basis.

The FLEX Options owned by each of the Ultra Buffer Funds will have the same terms (i.e. same strike price and expiration) for all investors of an Ultra Buffer Fund within an outcome period. The Ultra Buffer Cap Level will be determined with respect to each Ultra Buffer Fund on the inception date of the Ultra Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Ultra Buffer Fund at that time.

Investment Methodology for the Funds

Under Normal Market Conditions, each Fund will invest primarily in U.S. exchange-listed FLEX Options on the S&P 500 Index. Each of the Funds may invest its net assets (in the aggregate) in other investments which the Adviser or Sub-Adviser believes will help each Fund to meet its investment objective and that will be disclosed at the end of each trading day (“Other Assets”). Other Assets include only the following: cash or cash equivalents, as defined in Rule 14.11(i)(4)(C)(iii)¹⁵ and standardized options contracts listed on a U.S. securities exchange

¹⁵ 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, 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

that reference either the S&P 500 Index or that reference ETFs that track the S&P 500 Index (“Reference ETFs”).

S&P 500 Index FLEX Options

The market for options contracts on the S&P 500 Index traded on Cboe Exchange, Inc. (“Cboe Options”) is among the most liquid markets in the world. In 2017, more than 1.16 million options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than \$250 billion in notional volume traded on a daily basis. While FLEX Options are traded differently than standardized options contracts, the Exchange believes that this liquidity bolsters the market for FLEX Options, as described below. Every FLEX Option order submitted to Cboe Options is exposed to a competitive auction process for price discovery. The process begins with a request for quote (“RFQ”) in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications—underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of Cboe Options which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by Cboe Options.

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.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the S&P 500 Index for several reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options¹⁶ and the Financial Industry Regulatory Authority ("FINRA") designed to detect violations of the federal securities laws and self-regulatory organization ("SRO") rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of FLEX Options on the S&P 500 Index, will be acquired in extremely liquid and highly regulated markets,¹⁷ the Shares are less readily 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. Trading of the Shares

¹⁶ The Exchange notes that Cboe Options is a member of the Option Price Regulatory Surveillance Authority, which was established in 2006, to provide efficiencies in looking for insider trading and serves as a central organization to facilitate collaboration in insider trading and investigations for the U.S. options exchanges. For more information, see <http://www.cboe.com/aboutcboe/legal/departments/orsareg.aspx>.

¹⁷ All exchange-listed securities that the Funds may hold will trade on a market that is a member of the Intermarket Surveillance Group ("ISG") and the Funds will not hold any non-exchange-listed equities or options, however, not all of the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see www.isgportal.org.

through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) 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 a Fund or the related 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 a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

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. In addition, 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.

As noted above, options on the S&P 500 Index are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, options on the S&P 500 Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except for the limitations on listed derivatives in BZX Rule 14.11(i)(4)(C)(iv)(b), the Funds' 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 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 Funds. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Managed Fund Shares, which includes the

dissemination of key information such as the Disclosed Portfolio,¹⁸ Net Asset Value,¹⁹ and the Intraday Indicative Value,²⁰ suspension of trading or removal,²¹ trading halts,²² surveillance,²³ minimum price variation for quoting and order entry,²⁴ and the information circular,²⁵ as set forth in Exchange rules applicable to Managed Fund Shares. Moreover, all of the options contracts held by the Funds 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. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-traded 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 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.

Lastly, the issuer represents that it will provide and maintain a publicly available web tool for each of the Funds on its website that provides existing and prospective shareholders with important information to help inform investment decisions. The information provided includes

¹⁸ See Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

¹⁹ See Rule 14.11(i)(4)(A)(ii).

²⁰ See Rule 14.11(i)(4)(B)(i).

²¹ See Rule 14.11(i)(4)(B)(iii).

²² See Rule 14.11(i)(4)(B)(iv).

²³ See Rule 14.11(i)(2)(C).

²⁴ See Rule 14.11(i)(2)(B).

²⁵ See Rule 14.11(i)(6).

the start and end dates of the current outcome period, the time remaining in the outcome period, the Fund's current net asset value, the Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value. For each of the Funds, the web tool also provides information regarding each Fund's buffer. This information includes the remaining buffer available for a shareholder purchasing Shares at the current net asset value or the amount of losses that a shareholder purchasing Shares at the current net asset value would incur before benefitting from the protection of the buffer. The cover of each Fund's prospectus, as well as the disclosure contained in "Principal Investment Strategies," provides the specific web address for each Fund's web tool.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁶ in general and Section 6(b)(5) of the Act²⁷ 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(i) with the exception of

²⁶ 15 U.S.C. 78f.

²⁷ 15 U.S.C. 78f(b)(5).

Rule 14.11(i)(4)(C)(iv)(b), which requires 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).²⁸ Rule 14.11(i)(4)(C)(iv)(b) is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and FLEX Options on the S&P 500 Index for several reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised

²⁸ As noted above, the Exchange is submitting this proposal because the Funds would not meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) 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).

primarily of FLEX Options on the S&P 500 Index, will be acquired in extremely liquid and highly regulated markets, the Shares are less readily 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. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) 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 a Fund or the related 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 a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

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. In addition, 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. As noted above, options on the S&P 500 Index are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, options on the S&P 500 Index, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except as described above, the Funds will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements

regarding the Disclosed Portfolio,²⁹ Intraday Indicative Value,³⁰ suspension of trading or removal,³¹ trading halts,³² disclosure,³³ and firewalls.³⁴ The Trust is required to comply with Rule 10A-3 under the Act for the initial and continued listing of the Shares of each Fund. Moreover, all of the options contracts held by the Funds 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.

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 will facilitate the listing and trading of an additional type of Managed 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. Discussion and Commission Findings

²⁹ See Rule 14.11(i)(4)(B)(ii).

³⁰ See Rule 14.11(i)(4)(B)(i).

³¹ See Rule 14.11(i)(4)(B)(iii).

³² See Rule 14.11(i)(4)(B)(iv).

³³ See Rule 14.11(i)(6).

³⁴ See Rule 14.11(i)(7).

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares 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. 4, is consistent with Section 6(b)(5) of the Act,³⁶ which requires, among other things, that the Exchange's rules be designed 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 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 Act,³⁷ 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.

According to the Exchange, quotation and last-sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority.³⁸ RFQ information for FLEX Options will be available directly from Cboe Options. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services.³⁹ In addition, price information about cash equivalents will be available from major broker-dealer firms or market data vendors, as well as

³⁵ 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).

³⁶ 15 U.S.C. 78f(b)(5).

³⁷ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁸ See Amendment No. 4, supra note 7, at 20.

³⁹ See id.

from automated quotation systems, published or other public sources, or online information services.⁴⁰

The Commission also 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 and to prevent trading when a reasonable degree of transparency cannot be assured. Under BZX Rule 14.11(i)(4)(B)(iv), if the Exchange becomes aware that the NAV or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange is required to halt trading in such series of Managed Fund Shares. In addition, the Exchange represents that if the Funds or the Shares are not in compliance with the applicable listing requirements for Managed Funds Shares under BZX Rule 14.11(i), the Exchange will commence delisting procedures under BZX Rule 14.12 (Failure to Meet Listing Standards).⁴¹ The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.⁴² Further, the Trust has represented that it will provide and maintain a publicly available tool on its website that will provide existing and prospective Fund shareholders with certain information for each of the Funds including, among other things, current NAV, start and end dates of the current outcome period, and the remaining buffer available for a shareholder purchasing Shares at the current NAV or the amount of losses that a shareholder purchasing Shares at the current NAV would incur before benefitting from the protection of the buffer.⁴³

⁴⁰ See id. at 20-21.

⁴¹ See id. at 18.

⁴² See id. at 19.

⁴³ See id. at 21.

The Shares do not qualify for generic listing because the Funds will not satisfy the requirement of BZX Rule 14.11(i)(4)(C)(iv)(b) 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 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). Although the Funds will hold listed derivatives primarily on a single reference asset, the S&P 500 Index,⁴⁴ the Commission believes that the prices of the Shares will be less susceptible to manipulation. As the Exchange states, options on the S&P 500 Index are among the most liquid options in the world, and derive their value from the actively traded index components. Additionally, all of the options held by the Funds 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.⁴⁵

In support of this proposal, the Exchange represented that:

- (1) The Funds and the Shares will satisfy all of the requirements applicable to Managed Fund Shares under BZX Rule 14.11(i), as well as the Generic Listing Standards other than BZX Rule 14.11(i)(4)(C)(iv)(b).
- (2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by Cboe Options and FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

⁴⁴ The Funds also may invest in options overlying Reference ETFs.

⁴⁵ For a list of the current members of ISG, see www.isgportal.org.

- (3) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act.⁴⁶
- (4) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.⁴⁷

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 4.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 4 thereto, is consistent with Section 6(b)(5) of the Act⁴⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 4 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 4 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 Number SR-BatsBZX-2017-72 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.

⁴⁶ 17 CFR 240.10A-3.

⁴⁷ See Amendment No. 4, supra note 7, at 20.

⁴⁸ 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR-BatsBZX-2017-72. 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 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-2017-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 4, prior to the 30th day after the date of publication of notice of the filing of Amendment No. 4 in the Federal Register. Amendment No. 4 supplements the proposal by, among other things, representing that the issuer will provide and maintain a publicly available web tool for each of the Funds that will offer important information to help inform investment

decisions by prospective and existing shareholders. The amendment assisted the Commission in evaluating the Exchange's proposal and in determining that the listing and trading of the Shares is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁴⁹ to approve the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁵⁰ that the proposed rule change (SR-BatsBZX-2017-72), as modified by Amendment No. 4 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Brent J. Fields

Secretary

⁴⁹ 15 U.S.C. 78s(b)(2).

⁵⁰ Id.

⁵¹ 17 CFR 200.30-3(a)(12).