

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83114; File No. SR-CboeBZX-2018-005)

April 26, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to List and Trade Shares of the Cboe Vest S&P 500[®] Premium Income ETF Under Rule 14.11(c)(4)

I. Introduction

On January 10, 2018, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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 Cboe Vest S&P 500[®] Premium Income ETF, a series of ETF Series Solutions (the “Trust”). The proposed rule change was published for comment in the Federal Register on January 26, 2018.⁴ On March 8, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On April 18, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit

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. 82538 (January 19, 2018), 83 FR 3807.

⁵ See Securities Exchange Act Release No. 82832, 82 FR 11269 (March 14, 2018) (extending the time period to April 26, 2018).

⁶ Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2017-005/cboebzx2017005-3458514-162203.pdf>.

comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

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 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 Vest S&P 500[®] Premium Income ETF (the "Fund") under Rule 14.11(c)(4), which governs the listing and trading of Index Fund Shares based on fixed income securities indexes on the Exchange. The Fund will be an index-based exchange traded fund ("ETF"). The Fund will track the Cboe S&P 500[®] Volatility Risk Premia Index (the "Index").⁷

The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Fund on Form N-1A ("Registration Statement") with the Commission.⁸ The Fund's adviser, Cboe Vest Financial,

⁷ This filing was originally submitted on January 10, 2018 as SR-CboeBZX-2018-004. SR-CboeBZX-2018-004 was subsequently withdrawn on January 10, 2018 and replaced by this filing.

⁸ See Registration Statement on Form N-1A for the Trust, dated September 28, 2017 (File Nos. 333-179562 and 811-22668). The descriptions of the Fund and the Shares

LLC (the “Adviser”), and index provider, Cboe Exchange, Inc. (“Cboe Options” or the “Index Provider”), are affiliates and have implemented and will maintain a “fire wall” with respect to their respective personnel regarding access to information concerning the composition and/or changes to the underlying index or portfolio, as applicable. The Adviser and 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. 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 Rule 14.11(c)(4)(C)(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 the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer; it will implement 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

contained herein are based, in part, on information in the Registration Statement. 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, but the Fund will not be listed on the Exchange until such an order is issued and any conditions contained therein are satisfied.

designed to prevent the use and dissemination of material non-public information regarding such portfolio. Similarly, in the event that the Index Provider becomes registered as a broker-dealer or newly affiliated with another 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 Exchange also notes that the Adviser is a BZX Affiliate as defined in Rule 14.3(e)(1)(A),⁹ but the Fund is not an Affiliate Security, as defined in Rule 14.11(e)(1)(B),¹⁰ 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 for the Fund does not meet the listing requirements of Rule 14.11(c)(4) applicable to an index that consists of Fixed Income Securities,¹¹ which requires that the fixed income component securities in an index

⁹ 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.

¹⁰ 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).

¹¹ As defined in Rule 14.11(c)(4), the term “Fixed Income Security” shall mean debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, Treasury bills, government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or subdivision thereof.

or portfolio meet the criteria set forth in Rule 14.11(c)(4). As further described below, the Index consists of options on an index that consists of “U.S. Component Stocks” as defined in Rule 14.11(c)(1)(D),¹² and Fixed Income Securities. The Fixed Income Security portion of the Index, which consists of only Treasury bills, meets the “generic” listing requirements of Rule 14.11(c)(4). However, because the Index consists partially of options and Rule 14.11(c)(4) does not provide generic listing criteria for an index or portfolio that includes options, the Index does not meet the criteria set forth in Rule 14.11(c)(4).

Cboe S&P 500[®] Volatility Risk Premia Index

The Index is a rules-based options index created by the Index Provider, an affiliate of the Adviser, and designed to capture the “volatility risk premium” in standardized options on the S&P 500 Index (“SPX Options”). The “volatility risk premium” in SPX Options is based on the premise that the expected level of volatility of the S&P 500 Index priced into such options (the options’ “implied volatility”) is, on average, higher than the volatility actually experienced by the S&P 500 Index (the “realized volatility”).

On the last trading day of each month, the Index (i) writes (sells)¹³ call and put SPX Options (“Sold SPX Options”) with a delta¹⁴ of approximately ± 0.10 and an expiration date of

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

¹³ For purposes of this filing, when describing the Index, the terms “buy,” “sell,” “write,” “hold,” or any other term related to the acquisition, disposition, or issuance of an asset are intended to describe a theoretical transaction conducted by the Index that will be reflected in the Index constituents, rather than to imply that the Index is actually transacting.

¹⁴ “Delta” is a measure of an option’s sensitivity to changes in the price of the underlying asset (e.g., a call option with a delta of 0.10 is expected to increase \$0.10 for each \$1.00 increase in the price of the underlying asset) and reflects the volatility expected by the market. The strike price of a call option with a delta of 0.10 will be higher when the

the last trading day of the following month, (ii) buys call and put SPX Options (“Bought SPX Options”) with an expiration date of the last trading day of the following month and strike prices such that the maximum one-month loss to the Index is equal to the value of the Index, and (iii) buys one- and three-month U.S. Treasury securities equal in value to the net premiums earned from writing the Sold SPX Options, less the premiums incurred of the Bought SPX Options, and sufficient to cover the maximum potential one-month loss of the Index.

If the S&P 500 Index at the end of the following month is within the range of the strike prices of the Sold SPX Options, the Sold SPX Options expire worthless and the Index’s value will have increased for the month by the amount of the premiums from writing such options. If the S&P 500 Index at the end of the month is outside the range of the strike prices of the Sold SPX Options, positively or negatively, the Index will incur a loss proportional to the magnitude by which the S&P 500 Index is outside such range, less the premiums from writing such options. In other words, the Index incurs losses when increases or decreases in the level of the S&P 500 Index during a month exceed those implicitly anticipated by the options market.

The Index will only include SPX Options and Treasury bills. The strike prices for the Sold SPX Options will be “out-of-the-money” (i.e., the strike price of the sold put options will be less than the level of S&P 500 Index and the strike price of the sold call options will be more than the level of the S&P 500 Index). The strike prices for the Bought SPX Options will be higher and lower, respectively, than the strike prices for the Sold SPX Options, which offsets some of the Index’s risk from the Sold SPX Options. The difference between the strike prices of the Sold SPX Options and the Bought SPX Options represents the net liability for the Index, and the Index maintains an allocation to one- and three-month Treasury bills at least equal to such net

market expects significant volatility and lower when the market expects relatively stable prices.

liability. The Index receives premiums from the sale of the Sold SPX Options and pays premiums to buy the Bought SPX Options. The Index invests the net premium difference between the Sold SPX Options and the Bought SPX Options in one- and three-month Treasury bills. The Index holds each option until its expiration.

If the value of the S&P 500 Index rises above the strike price of the put S&P 500 Index Options (the “SPX Puts”) or falls below the strike price of the call S&P 500 Index Options (the “SPX Calls”) sold by the Index, the Sold SPX Options will not be exercised and will expire worthless, resulting in a gain to the Index equal to the premiums received from the Sold SPX Options. If the value of the S&P 500 Index falls below the strike price of the SPX Puts or rises above the strike price of the SPX Calls sold by the Index, the Sold SPX Options will finish “in-the-money” and the Index incurs a loss equal to the difference between the Sold SPX Options’ strike price and the value of the S&P 500 Index, less the value of the premiums received from the Sold SPX Options.

If the value of the S&P 500 Index rises above the strike price of the SPX Puts or falls below the strike price of the SPX Calls bought by the Index, the Bought SPX Options will not be exercised and will expire worthless, resulting in a loss to the Index equal to the premiums paid for the Bought SPX Options. If the value of the S&P 500 Index falls below the strike price of the SPX Puts or rises above the strike price of the SPX Calls sold by the Index, the Bought SPX Options will finish “in-the-money” and the Index receives a gain equal to the difference between the Bought SPX Options’ strike price and the value of the S&P 500 Index, less the value of the premiums paid for the Bought SPX Options.

The strike prices of the SPX Puts and SPX Calls are calculated such that the Index is equity-market-neutral, meaning that it seeks to earn a total return in most equity market

conditions regardless of general market direction as measured by the move in value of the S&P 500 Index. The cash and net option premium proceeds will be invested in short-term Treasury bills which will be rolled at maturity. This makes the Index bond-market-neutral, meaning that as interest rates and the yield for Treasury bills go up or down, the short duration of the Treasury bills will result in minimal effect on the Index.

Fund Holdings

Under Normal Market Conditions,¹⁵ the Fund will invest all, or substantially all, of its assets in the SPX Options that make up the Index, as well as the Treasury bills included in the Index. Under Normal Market Conditions, at least 80% of the Fund's total assets (exclusive of any collateral held from securities lending) will be invested in the SPX Options or Treasury bills that make up the Index. In addition to the SPX Options and Treasury bills that make up the Index, the Fund may invest up to 20% of its total assets in U.S. exchange-listed options based on one or more ETFs that track the performance of the S&P 500 Index ("Comparable ETF Options"). The Fund will hold only SPX Options, Comparable ETF Options, Treasury bills included in the Index, and other cash and cash equivalents.¹⁶

¹⁵ 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.

¹⁶ For purposes of this filing, cash equivalents are 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

Additional Discussion

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Fund's Shares and SPX Options and Comparable ETF Options for the following reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index;¹⁷ (ii) the liquidity of the SPX Options;¹⁸ and (iii) surveillance by the Exchange, Cboe Options and the Financial Industry Regulatory Authority ("FINRA") designed to detect violations of the federal securities laws and self-regulatory organization ("SRO") rules.

Trading in the Shares and the underlying investments will be subject to the federal securities laws and Exchange, Cboe Options, FINRA, and, with respect to the Comparable ETF Options, other U.S. options exchanges' rules and surveillance programs.¹⁹

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 Index Fund Shares. FINRA conducts certain cross-market surveillances on

market funds.

¹⁷ The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

¹⁸ The market for SPX Options traded on Cboe Options is among the most liquid markets in the world. In 2017, approximately 1.2 million options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than \$300 billion in notional volume traded on a daily basis.

¹⁹ 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>.

behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

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 (as applicable), or the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The Trust has represented to the Exchange that it will advise the Exchange of any failure by the Fund or 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 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.

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 Intermarket Surveillance Group ("ISG")²⁰ 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, including treasuries, reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets

²⁰ All exchange-listed securities that the Fund may hold will trade on a market that is a member of the ISG and the Fund will not hold any non-exchange-listed options, however, not all of the components of the portfolio for the Fund 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.

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, SPX Options 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, SPX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the price of the Shares. The Exchange also believes that such liquidity are sufficient to support the creation and redemption mechanism. Coupled with the surveillance programs of the SROs described above, the Exchange does not believe that trading in the Fund's Shares would present manipulation concerns. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).²¹ The Fund's

²¹ The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Adviser will segregate or earmark liquid assets or otherwise cover the transactions that give rise to such risk. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

investments will not be used to seek performance that is the multiple or inverse multiple (i.e. 2x or -2x) of the Index. The Fund's use of derivative instruments will be collateralized.

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)(4) except as it relates to the portion of the Index that consists of SPX Options because Rule 14.11(c)(4) does not provide generic listing criteria for an index or portfolio that includes options. Further to this point, the three-month Treasury bills that compose the entirety of the fixed income portion of the Index will satisfy all requirements of Rule 14.11(c)(4). 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. 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 Fund will comply with all other requirements applicable to Index Fund Shares, which includes requirements relating to the dissemination of key information such as the Net Asset Value, Index value, and the Intraday Indicative Value, rules governing the trading of equity securities, trading hours, trading halts, firewalls for the Index Provider and Adviser, surveillance, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

Quotation and last sale information for SPX Options and Comparable ETF Options will be available via the Options Price Reporting Authority. 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 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.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ 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 required by BZX Rule 14.11(c)(4), which includes the listing requirements for an index of Fixed Income Securities, except as it relates to the portion of the Index that consists of SPX Options because Rule 14.11(c)(4) does not provide generic listing criteria for an index or portfolio that includes options. Specifically, because the Index consists partially of options and Rule 14.11(c)(4) does not provide generic listing criteria for an index or portfolio that includes options, the Index does not meet the criteria set forth in Rule 14.11(c)(4). Nevertheless, the Exchange believes that the concerns that sufficient protections are in place to protect against market manipulation of the Fund's Shares and S&P 500 Index Options and Comparable ETF Options for the following reasons: (i) the diversity, liquidity, and market cap of the securities underlying the S&P 500

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(5).

Index;²⁴ (ii) the liquidity of the S&P 500 Index Options;²⁵ and (iii) surveillance by the Exchange, Cboe Options and 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 the Fund’s portfolio, which are comprised primarily of S&P 500 Index Options, 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 Index Fund Shares. 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 (as applicable), or the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The Trust has represented to the Exchange that it will advise the Exchange of any failure by the Fund or Shares

²⁴ The Exchange notes that the diversity, liquidity, and market cap of the components of the S&P 500 Index are such that the S&P 500 Index would meet the generic listing standards applicable to an index composed of U.S. Component Stocks in Rule 14.11(c)(3)(A)(i).

²⁵ The market for SPX Options traded on Cboe Options is among the most liquid markets in the world. In 2017, approximately 1.2 million options contracts on the S&P 500 Index were traded per day on Cboe Options, which is more than \$300 billion in notional volume traded on a daily basis. See supra note 18.

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 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 the 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. The Exchange is also able to access, as needed, trade information for certain fixed income instruments reported to TRACE. 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, SPX Options 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, SPX Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the price of the Shares. The Exchange also believes that such efficiency and liquidity are 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 Fund's Shares would present manipulation concerns.

The Exchange represents that, except as it relates to the options portion of the Index described above, the Fund will meet and be subject to all other requirements of Rule 14.11(c)(4) related to generic listing standards of the Index and other applicable requirements for such a series of Index Fund Shares under Rule 14.11(c) on an initial and continued listing basis, including those requirements regarding the dissemination of key information such as the Net Asset Value, the Index, 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. 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. 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.

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 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. Discussion and Commission Findings

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.²⁶ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,²⁷ 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,²⁸ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair

²⁶ 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).

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78k-1(a)(1)(C)(iii).

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 SPX Options and Comparable ETF Options will be available via the Options Price Reporting Authority.²⁹ 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.³⁰ In addition, price information on Treasury bills and other cash equivalents will be 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.³¹

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(c)(1)(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 Index Fund Shares. In addition, the Exchange represents that if the Fund or the related Shares are not in compliance with the applicable listing requirements for Index Fund Shares under BZX Rule 14.11(c)(4), the Exchange will commence delisting procedures under BZX Rule 14.12 (Failure to Meet Listing Standards).³² The

²⁹ See Amendment No. 1, supra note 6, at 15.

³⁰ See id.

³¹ See id.

³² See id. at 12. See also BZX Rule 14.11(c)(4).

Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.³³

The Shares do not qualify for generic listing because the Index includes SPX Options. The Commission has previously approved listing rules for issues of Index Fund Shares that tracked indexes that included listed options.³⁴ The Commission believes that the price of the Shares will not be susceptible to manipulation. Options on the S&P 500 Index are among the most liquid options in the world,³⁵ and derive their value from the actively traded index components. Additionally, all of the options 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.

In support of this proposal, the Exchange represents that:

- (1) The Fund will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(c), except as described above.
- (2) The Shares will comply with all requirements applicable to Index Fund Shares under BZX Rule 14.11(c) including, but not limited to the requirements relating to the dissemination of key information such as the NAV, the Index, and the Intraday Indicative Value, rules governing the trading of equities securities, trading hours, trading halts, surveillance, and the information circular, as set forth

³³ See Amendment No. 1, *supra* note 6, at 13.

³⁴ See, e.g., Securities Exchange Act Release No. 79402 (November 25, 2016), 81 FR 86760 (December 1, 2016) (SR-NYSEArca-2016-131) (approving the listing and trading of shares of the Virtus Enhanced U.S. Equity ETF); No. 74675 (April 8, 2015), 80 FR 20038 (April 14, 2015) (SR-NYSEArca-2015-05) (approving the listing and trading of shares of the WisdomTree Put Write Strategy Fund).

³⁵ See *supra* note 18.

in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

- (3) 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.
- (4) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.³⁶
- (5) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.³⁷

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 1.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act³⁸ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 1 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

³⁶ 17 CFR 240.10A-3.

³⁷ See Amendment No. 1, supra note 6, at 15.

³⁸ 15 U.S.C. 78f(b)(5).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2018-005 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 Number SR-CboeBZX-2018-005. 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-CboeBZX-2018-005 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. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. Amendment No. 1 supplements the proposal by, among other things: (1) providing additional information regarding the Index; and (2) making additional representations regarding the Adviser and Index Provider implementing and maintaining a fire wall. The changes 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,³⁹ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

³⁹ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴⁰ that the proposed rule change (SR-CboeBZX-2018-005), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Eduardo A. Aleman
Assistant Secretary

⁴⁰ Id.

⁴¹ 17 CFR 200.30-3(a)(12).