

### III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>31</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 21, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 4, 2019.

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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2019-39 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-NYSEArca-2019-39. This file number should be included on the subject line if email 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-NYSEArca-2019-39 and should be submitted by October 21, 2019. Rebuttal comments should be submitted by November 4, 2019.

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

**Jill M. Peterson,**  
Assistant Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87095; File No. SR-CboeBZX-2019-083]

#### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Regarding Certain Changes to Investments of the Aptus Collared Income Opportunity ETF, a Series of ETF Series Solutions

September 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 16, 2019, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the

proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to allow the Aptus Collared Income Opportunity ETF (the "Fund"), a series of ETF Series Solutions (the "Trust"), to hold certain instruments in a manner that does not necessarily comply with Rule 14.11(i) ("Managed Fund Shares"). The shares of the Fund are referred to herein as the "Shares."

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the 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 aspects of such statements.

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

###### 1. Purpose

The Shares are currently listed on the Exchange pursuant to the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i)<sup>5</sup> (the "Generic Listing Standards") and began trading on July 10, 2019. While the Fund currently meets all of the Generic Listing Standards, the Adviser would like to increase the flexibility of the Fund's holdings in a way that might not meet such requirements. As such, the Exchange submits this proposal in order

<sup>31</sup> Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>32</sup> 17 CFR 200.30-3(a)(57).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The Commission approved Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

to allow the Shares to continue listing and trading on the Exchange while holding certain listed derivatives in a manner that may not comply with Rule 14.11(i)(4)(C)(iv)(b).<sup>6</sup> Specifically, the Exchange is proposing to allow the Fund to hold options on the S&P 500 Index (“SPX Options”) and/or options on the SPDR S&P 500 ETF Trust (“SPY”) (“SPY Options”) and, collectively with SPX Options, “S&P 500 Options”) in a manner that exceeds both the 30% Limit and the 65% Limit. Otherwise, the Fund will continue to comply with all other listing standards on an initial and continued listing basis under Rule 14.11(i). As noted above, the Fund currently meets the Generic Listing Standards and will continue to meet the Generic Listing Standards until and unless this proposal becomes operative.

The Exchange notes that the proposed exceptions to the Generic Listing Standards included in this proposal are substantively identical to exceptions previously approved by the Commission and do not raise any new issues that the Commission has not previously contemplated.<sup>7</sup>

The Shares are offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012.<sup>8</sup> 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.<sup>9</sup> Aptus Capital Advisors,

LLC (the “Adviser”) serves as investment adviser to the Fund. 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.<sup>10</sup> 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. The Adviser is not a broker-dealer and is not affiliated with a broker-dealer. 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 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.

#### Aptus Collared Income Opportunity ETF

According to the Registration Statement, the Fund seeks current income and capital appreciation. The Fund is an actively-managed exchange-traded fund (“ETF”) that seeks to achieve its investment objective principally by investing in a portfolio of large capitalization U.S.-listed equity securities and an options collar (*i.e.*, a mix of written (sold) call options and long (bought) put options) on the same underlying equity securities. The equity securities and options held by the Fund must be listed on a U.S.-exchange.

The Adviser selects the Fund’s equity securities based on the Adviser’s assessment of the likelihood that the dividends paid by the issuer will increase or remain stable and based on the liquidity of the options available for such security. The Adviser considers factors primarily related to yield, earnings growth, revenue growth, and distribution history in assessing the likelihood that the dividends paid by an issuer will increase or remain stable. The Fund’s portfolio will typically consist of approximately 30 equity securities across a variety of industries, with generally no more than 30% of the Fund’s net assets invested in companies in a single sector. The Fund’s options collar strategy typically consists of two components: (i) Selling covered call options on up to 100% of the equity securities held by the Fund to generate premium from such options, while (ii) simultaneously reinvesting a portion of such premium to buy put options on all or a significant portion of an equity position held by the Fund to “hedge” or mitigate the downside risk associated with owning equity securities. The Fund seeks to generate income from the combination of dividends received from the equity securities held by the Fund and premiums received from the sale of options.

The equity securities held by the Fund will meet the requirements of Rule 14.11(i)(4)(C)(i)(a) and the single equity options contracts will meet the requirements of Rule 14.11(i)(4)(C)(iv)(a) and (b).

In addition to the above described principal investment strategy, the Fund may also invest in a “bull call spread” options strategy as a non-principal investment strategy. The Fund’s bull call spread strategy entails (i) the purchase of at-the-money call S&P 500 Options (*i.e.*, call options with a strike price roughly equal to the current price

<sup>6</sup> 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) (the “65% Limit”), 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) (the “30% Limit”).”

<sup>7</sup> The Exchange notes that this proposal is very similar to several previously submitted proposals to list and trade a series of Index Fund Shares (which are referred to as Investment Company Units under the rules of NYSE Arca, Inc.) and Managed Fund Shares with exposures to a single underlying reference asset that were either approved by the Commission or effective upon filing. *See* Securities Exchange Act Release Nos. 83146 (May 1, 2018), 83 FR 20103 (May 7, 2018) (SR-ChoeBZX-2018-029); 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018); 77045 (February 3, 2016), 81 FR 6916 (February 9, 2016) (SR-NYSEArca-2015-113) (the “Amendment”); and 74675 (April 8, 2015), 80 FR 20038 (April 14, 2015) (SR-NYSEArca-2015-05) (collectively, with the Amendment, the “Arca Filing”).

<sup>8</sup> The Commission has issued an order, upon which the Trust may rely, granting certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 32110 (May 10, 2016) (File No. 812-14604).

<sup>9</sup> *See* Registration Statement on Form N-1A for the Trust, dated April 26, 2019 (File Nos. 333-179562 and 811-22668). The descriptions of the

Fund and the Shares contained herein are based, in part, on information in the Registration Statement.

<sup>10</sup> 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.

of the underlying asset); and (ii) writing (selling) out-of-the-money call S&P 500 Options (*i.e.*, call options with a strike price higher than the current price of the underlying asset). The Adviser expects to generally invest less than 5% of the Fund's net assets in the bull call spread options strategy, however, the gross notional value of such positions may exceed the 30% Limit and the 65% Limit.

#### S&P 500 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 August 2019, approximately 1.488 million options contracts on the S&P 500 Index were traded per day, which is more than \$430 billion in notional volume traded on a daily basis. Similarly, more than 75 million options contracts referencing SPY were traded in August 2019, representing more than \$105 billion in notional volume on a daily basis. The Exchange believes that sufficient protections are in place to protect against market manipulation of the Fund's Shares and S&P 500 Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the significant liquidity in the market for SPX Options and SPY Options; and (iii) surveillance by the Exchange, Cboe Options, other U.S. options exchanges, 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 S&P 500 Options in the Fund's portfolio will be acquired in extremely liquid and highly regulated markets,<sup>11</sup> 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 and reference assets, (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 the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the applicable listing requirements, then 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 for the 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 as well as the equities and exchange-traded options contracts held by the Fund from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, equities, 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 and SPY 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 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, the market cap and liquidity of SPY, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for SPY, S&P 500 Index securities, SPX Options, and SPY 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 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 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 Fund's 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 Fund. In addition, the Exchange represents that the Shares of the Fund will continue to comply with all other requirements applicable to Managed Fund Shares, which includes the dissemination of key information such as the Disclosed Portfolio,<sup>12</sup> Net Asset Value,<sup>13</sup> and the Intraday Indicative Value,<sup>14</sup> suspension of trading or removal,<sup>15</sup> trading halts,<sup>16</sup> surveillance,<sup>17</sup> minimum price variation for quoting and order entry,<sup>18</sup> and the information circular,<sup>19</sup> as set forth in Exchange rules applicable to Managed Fund Shares. Further, all statements or representations regarding 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, or the applicability of Exchange listing rules shall constitute continued listing

<sup>11</sup> All exchange-listed securities that the Fund may hold will trade on a market that is a member of the Intermarket Surveillance Group ("ISG") and the Fund will not hold any non-exchange-listed equities or 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](http://www.isgportal.org).

<sup>12</sup> See Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

<sup>13</sup> See Rule 14.11(i)(4)(A)(ii).

<sup>14</sup> See Rule 14.11(i)(4)(B)(i).

<sup>15</sup> See Rule 14.11(i)(4)(B)(iii).

<sup>16</sup> See Rule 14.11(i)(4)(B)(iv).

<sup>17</sup> See Rule 14.11(i)(2)(C).

<sup>18</sup> See Rule 14.11(i)(2)(B).

<sup>19</sup> See Rule 14.11(i)(6).

requirements for 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. 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. 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.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>20</sup> in general and Section 6(b)(5) of the Act<sup>21</sup> 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, because, as noted above, the Shares will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) with the exception of 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).<sup>22</sup> Rule

14.11(i)(4)(C)(iv)(b) is intended to ensure that the 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 Fund's Shares and S&P 500 Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the significant liquidity in the market for SPX Options and SPY Options; and (iii) surveillance by the Exchange, Cboe Options, other U.S. options exchanges, 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 the Fund's portfolio, which are comprised primarily of S&P 500 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 Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio and reference assets, (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 the Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund or the Shares are not in compliance with the

of the portfolio (including gross notional exposures).

applicable listing requirements, then 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 for the 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, SPX Options and SPY Options are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. 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, the market cap and liquidity of SPY, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, SPY, SPX Options and SPY Options, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Fund's 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 Fund's Shares would present manipulation concerns.

The Exchange represents that, except as described above, the Fund will meet and be subject to all other requirements of the Generic Listing Standards and

<sup>20</sup> 15 U.S.C. 78f.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> As noted above, the Exchange is submitting this proposal because the Fund 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

other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the Disclosed Portfolio,<sup>23</sup> Intraday Indicative Value,<sup>24</sup> suspension of trading or removal,<sup>25</sup> trading halts,<sup>26</sup> disclosure,<sup>27</sup> and firewalls.<sup>28</sup> 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.

Finally, this proposal would allow the Fund to hold S&P 500 Options in a manner that is generally consistent with other series of Index Fund Shares and Managed Fund Shares based on filings that were either effective upon filing or that the Commission has approved for listing and trading that also did not satisfy the applicable generic listing standards. Specifically, the proposal is seeking similar exposure as was approved by the Commission in the Arca Filing, which allowed the listing of a fund based on an index with significant exposure to SPX Options. As such, the Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the proposal contains no new issues that the Commission has not previously contemplated.

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 allow the Fund to fully implement its options strategy, which will enhance competition among market participants, to the benefit of investors and the marketplace.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>29</sup> and Rule 19b-4(f)(6) thereunder.<sup>30</sup>

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act<sup>31</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)<sup>32</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange believes that the proposal will enhance competition among both market participants and listing venues to the benefit of investors and the marketplace by providing additional flexibility for the options strategy of the Fund. Further, the Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest because the proposal does not raise any new issues that the Commission has not previously contemplated. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>33</sup>

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>31</sup> 17 CFR 240.19b-4(f)(6).

<sup>32</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>33</sup> For purposes only of waiving the 30-day operative delay, the Commission also has

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-083 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-2019-083. This file number should be included on the subject line if email 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

considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>23</sup> See Rule 14.11(i)(4)(B)(ii).

<sup>24</sup> See Rule 14.11(i)(4)(B)(i).

<sup>25</sup> See Rule 14.11(i)(4)(B)(iii).

<sup>26</sup> See Rule 14.11(i)(4)(B)(iv).

<sup>27</sup> See Rule 14.11(i)(6).

<sup>28</sup> See Rule 14.11(i)(7).

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-2019-083, and should be submitted on or before October 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-21094 Filed 9-27-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

#### Extension:

Rule 12d3-1, SEC File No. 270-504, OMB Control No. 3235-0561.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) has submitted to the Office of Management and Budget (“OMB”) a request for extension of the previously approved collection of information discussed below.

Section 12(d)(3) of the Investment Company Act of 1940 (15 U.S.C. 80a) generally prohibits registered investment companies (“funds”), and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter (“securities-related businesses”). Rule 12d3-1 (“Exemption of acquisitions of securities issued by persons engaged in securities related businesses” (17 CFR 270.12d3-1)) permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses, but a fund may not rely on rule 12d3-1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.

A fund may, however, rely on an exemption in rule 12d3-1 to acquire securities issued by its subadvisers in circumstances in which the subadviser would have little ability to take advantage of the fund, because it is not in a position to direct the fund’s securities purchases. The exemption in rule 12d3-1 is available if (i) the subadviser is not, and is not an affiliated person of, an investment adviser that provides advice with respect to the portion of the fund that is acquiring the securities, and (ii) the advisory contracts of the subadviser, and any subadviser that is advising the purchasing portion of the fund, prohibit them from consulting with each other concerning securities transactions of the fund, and limit their responsibility in providing advice to providing advice with respect to discrete portions of the fund’s portfolio.

Based on an analysis of fund filings, the staff estimates that approximately 216 fund portfolios enter into subadvisory agreements each year.<sup>1</sup> Based on discussions with industry representatives, the staff estimates that it will require approximately 3 attorney hours to draft and execute additional clauses in new subadvisory contracts in order for funds and subadvisers to be able to rely on the exemptions in rule 12d3-1. Because these additional clauses are identical to the clauses that a fund would need to insert in their subadvisory contracts to rely on rules 10f-3, 17a-10, and 17e-1 and because we believe that funds that use one such rule generally use all of these rules, we apportion this 3 hour time burden equally to all four rules. Therefore, we estimate that the burden allocated to rule 12d3-1 for this contract change would be 0.75 hours.<sup>2</sup> Assuming that all 216 funds that enter into new subadvisory contracts each year make the modification to their contract required by the rule, we estimate that the rule’s contract modification requirement will result in 182 burden hours annually.<sup>3</sup>

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of

<sup>1</sup> Based on data from Morningstar Direct, as of December 31, 2018, there are 12,459 registered funds (open-end funds, closed-end funds, and exchange-traded funds), 4,615 of which have subadvisory relationships (approximately 37%). 583 new funds were established in 2018. 583 new funds  $\times$  37% = 216 funds.

<sup>2</sup> This estimate is based on the following calculation (3 hours  $\div$  4 rules = .75 hours).

<sup>3</sup> This estimate is based on the following calculation: (0.75 hours  $\times$  216 portfolios = 182 burden hours).

the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 12d3-1. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following website, [www.reginfo.gov](http://www.reginfo.gov). Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: [Lindsay.M.Abate@omb.eop.gov](mailto:Lindsay.M.Abate@omb.eop.gov); and (ii) Charles Riddle, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o Candace Kenner, 100 F Street NE, Washington, DC 20549 or send an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov). Comments must be submitted to OMB within 30 days of this notice.

Dated: September 24, 2019.

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2019-21084 Filed 9-27-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87092; File No. SR-CboeBZX-2019-082]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Physical Connectivity

September 24, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on September 10, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>34</sup> 17 CFR 200.30-3(a)(12).