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Number of Respondents: 5,682,744 (58,071 (INV 40); 3,358,486 (INV 41); 56,090 (INV 42); 855,051 (INV 43); 1,355,046 (INV 44)).

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 473,562 (4,839 (INV 40); 279,874 (INV 41); 4,674 (INV 42); 71,254 (INV 43); 112,921 (INV 44))

U.S. Office of Personnel Management.

Jeff T.H. Pon,
Director.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83796; File No. SR-CboeBZX-2017-005]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of Twelve Monthly Series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF Under the ETF Series Solutions Trust Under Rule 14.11(c)(3), Index Fund Shares

August 8, 2018.

I. Introduction

On November 21, 2017, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade shares (“Shares”) of twelve monthly series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF of the ETF Series Solutions Trust (“Trust”) under BZX Rule 14.11(c)(3). The proposed rule change was published for comment in the **Federal Register** on December 11, 2017.³

On January 22, 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.⁴ On March 9, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act⁵ to determine whether to approve or disapprove the proposed rule change.⁶ On April 13, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.⁷ On June 6, 2018, the Commission designated a longer period for Commission action on the proposed rule change.⁸ On August 6, 2018, the Exchange filed Amendment

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 82217 (December 5, 2017), 82 FR 58243.

⁴ See Securities Exchange Act Release No. 82558, 83 FR 3820 (January 26, 2018).

⁵ 15 U.S.C. 78s(b)(2)(B).

⁶ See Securities Exchange Act Release No. 82842, 83 FR 11273 (March 14, 2018).

⁷ Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available at: <https://www.sec.gov/comments/sr-cboebzx-2017-005/cboebzx2017005-3458514-162203.pdf>.

⁸ See Securities Exchange Act Release No. 83390, 83 FR 27355 (June 12, 2018).

No. 2 to the proposed rule change.⁹ The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 2.

II. Exchange's Description of the Proposal, as Modified by Amendment No. 2

The Exchange proposes to list and trade the Shares of twelve monthly series of the Cboe Vest S&P 500® Buffer Protect Strategy ETF (individually, “Fund,” and, collectively, “Funds”) under BZX Rule 14.11(c)(3), which governs the listing and trading of Index Fund Shares. Each Fund will be an index-based exchange traded fund (“ETF”): (1) Cboe Vest S&P 500® Buffer

⁹In Amendment No. 2, which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety, the Exchange: (a) Represented that the issuer will provide and maintain a publicly available web tool for each of the Funds (as defined herein) on its website that provides existing and prospective shareholders with important information to help inform investment decisions, including the start and end dates of the current outcome periods, the time remaining in the outcome periods, each Fund's current net asset value, each Fund's cap for the outcome period, the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value, and information regarding each Fund's buffer; (b) represented that, based on certain potential limitations of the Investment Company Act of 1940 (“1940 Act”) associated with trading options on Cboe Exchange, Inc. (“Cboe Options”) and any other exchanges owned or controlled by Cboe Global Markets, Inc. (together with Cboe Options, collectively, “Cboe Exchanges”), (i) the Funds will not be able to hold FLEX Options (as defined herein) or Standardized S&P 500 Index Options (as defined herein) until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds; (ii) the Exchange will not list and trade the Shares of the Funds on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds; (c) conformed certain continued listing requirements to maintain consistency with BZX listing rules; (d) added representations relating to protections against market manipulation in the context of the underlying indexes and index values; (e) supplemented its description of the Comparable ETF Options (as defined herein); (f) provided a representation relating to the Exchange's ability to access trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine for surveillance purposes; and (g) made other non-substantive, technical, and clarifying corrections to the proposal. Because Amendment No. 2 adds certain limiting conditions to the commencement of listing and trading the Shares on the Exchange based on requirements of the 1940 Act, represents that the issuer will provide and maintain an additional web-based tool to aid investors with respect to the Funds, and otherwise does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues under the Act, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2017-005/cboebzx2017005-4171830-172318.pdf>.

Protect Strategy (January) ETF; (2) Cboe Vest S&P 500® Buffer Protect Strategy (February) ETF; (3) Cboe Vest S&P 500® Buffer Protect Strategy (March) ETF; (4) Cboe Vest S&P 500® Buffer Protect Strategy (April) ETF; (5) Cboe Vest S&P 500® Buffer Protect Strategy (May) ETF; (6) Cboe Vest S&P 500® Buffer Protect Strategy (June) ETF; (7) Cboe Vest S&P 500® Buffer Protect Strategy (July) ETF; (8) Cboe Vest S&P 500® Buffer Protect Strategy (August) ETF; (9) Cboe Vest S&P 500® Buffer Protect Strategy (September) ETF; (10) Cboe Vest S&P 500® Buffer Protect Strategy (October) ETF; (11) Cboe Vest S&P 500® Buffer Protect Strategy (November) ETF; and (12) Cboe Vest S&P 500® Buffer Protect Strategy (December) ETF. Each Fund will be based on the Cboe S&P 500 Buffer Protect Index (Month) Series, where “Month” is the corresponding month associated with the roll date of the applicable Fund (individually, “Index,” and, collectively, “Indexes”). The Shares will be offered by the Trust, which was established as a Delaware statutory trust on February 9, 2012. The Exchange represents that the Trust has filed a registration statement on behalf of the Funds on Form N-1A (“Registration Statement”) with the Commission.¹⁰

A. Description of the Funds and Underlying Indexes

The Funds’ adviser, Cboe Vest Financial, LLC (“Adviser”), and Cboe Options (“Index Provider”), are not registered as broker-dealers, but are affiliated with a broker-dealer.¹¹ Each

¹⁰ See Registration Statement on Form N-1A for the Trust, dated October 24, 2017 (File Nos. 333-179562 and 811-22668).

¹¹ The Exchange represents that 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 of, or changes to, the Indexes. 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, non-public information regarding the Indexes, pursuant to BZX Rule 14.11(c)(3)(B)(iii). According to the Exchange, 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 of, or changes to, the portfolio, and Adviser personnel who make decisions regarding a Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material, non-public information regarding a Fund’s portfolio. In the event that (a) the Adviser or Index Provider 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 of, or changes to, the portfolio, and will be subject to

Fund’s investment objective would be to track, before fees and expenses, the performance of its respective Index. The value of each Index would be calculated daily by Cboe Options utilizing an option valuation model. The Exchange submitted this proposed rule change because the Indexes for the Funds would not meet the listing requirements of Rule 14.11(c)(3), which requires, among other things, that all securities in the index or portfolio be U.S. Component Stocks¹² listed on the Exchange or another national securities exchange and be NMS Stocks as defined in Rule 600 of Regulation NMS under the Act. Specifically, the Indexes would consist of options on an index of U.S. Component Stocks. Because the Indexes would consist of options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS under the Act, the Exchange represents that the Indexes would not meet the criteria set forth in BZX Rule 14.11(c)(3). As a result, the Exchange submitted this proposal to list the Shares on the Exchange.

1. Cboe Vest S&P 500® Buffer Protect Index

Each Index is a rules-based options index that would consist exclusively of FLEXible EXchange Options on the S&P 500 Index (“FLEX Options”) listed on Cboe Options.¹³ The Indexes are designed to provide exposure to the large capitalization U.S. equity market with lower volatility and downside risks than traditional equity indices, except in environments of rapid appreciation in the U.S. equity market over the course of one year. On a specified day of the applicable month for each Index (“Roll Date”),¹⁴ the applicable Index would implement a portfolio of put and call FLEX Options with expirations on the next Roll Date that, if held to such Roll Date, would seek to “buffer

procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

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 More information about the Indexes and methodology is available on the Index Provider’s website at www.cboe.com.

¹⁴ As described above, each of the twelve Indexes is designed to provide returns over a defined year long period and, thus, there would be an Index associated with each month. As such, the Roll Date for a specific Index would be dependent on the monthly series for which the Index is associated. For example, the Roll Date for the Cboe® S&P 500® Buffer Protect Index January Series would be in January and the Roll Date for the Cboe® S&P 500® Buffer Protect Index February Series would be in February, a pattern which would continue through the rest of the calendar year.

protect” against the first 10% decline in the value of the S&P 500 Index, while providing participation up to a maximum capped gain in the value of the S&P 500 Index (“Capped Level”). The Capped Level would be calculated as of each Roll Date based on the prices of the applicable FLEX Options, such that the value of the portfolio of FLEX Options that comprises each Index would be equivalent to the value of a portfolio comprised of the S&P 500 Index constituents. As of the 2017 Roll Date, the Capped Level for the January Index was 11%, meaning that the January Index is designed to provide participation up to a maximum 11% gain in the value of the S&P 500 Index from the 2017 Roll Date to the 2018 Roll Date, but would not provide any participation for gains in the S&P 500 Index in excess of 11%.

Each Index is designed to provide the following outcomes between Roll Dates:

- *If the S&P 500 Index declines more than 10%:* The Index declines 10% less than the S&P 500 Index (e.g., if the S&P 500 Index returns – 35%, the Index is designed to return – 25%);
- *If the S&P 500 Index declines between 0% and 10%:* The Index provides a total return of zero (0%);
- *If the S&P 500 Index appreciates between 0% and the Capped Level:* The Index appreciates the same amount as the S&P 500 Index; and
- *If the S&P 500 Index appreciates more than the Capped Level:* The Index appreciates by the amount of the Capped Level.

Each Index would include a mix of purchased and written (sold) put and call FLEX Options structured to achieve the results described above. Such results would only be applicable for each full 12-month period from one Roll Date to the next Roll Date, and the Index may not return such results for shorter or longer periods. The value of each Index would be calculated daily by Cboe Options utilizing a rules-based options valuation model.

2. Holdings of the Funds

Under Normal Market Conditions,¹⁵ each Fund would seek to track the total return performance, before fees and expenses, of its respective Index by investing all, or substantially all, of its assets in a combination of some or all

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.

of the following: The FLEX Options that make up each respective underlying Index; standardized U.S. exchange-listed options contracts on the S&P 500 Index (“Standardized S&P 500 Index Options” and, together with FLEX Options, collectively, “S&P 500 Index Options”); and U.S. exchange-listed options on one or more ETFs¹⁶ that track the performance of the S&P 500 Index and have the same economic characteristics as the FLEX Options that make up each Index (“Comparable ETF Options”).¹⁷ The Fund may also hold cash and cash equivalents.¹⁸

B. Conditions To Listing and Trading the Shares on the Exchange

According to the Exchange, the Trust is registered with the Commission as an open-end investment company. However, the Commission has not yet issued an order(s) granting exemptive relief to the Trust under the 1940 Act applicable to the activities of the Funds, and, as a result, the Exchange represents that the Shares of the Funds will not be listed and traded on the Exchange until such an order(s) is issued and any conditions contained therein are satisfied.¹⁹

Specifically, the Exchange represents that, because of certain potential limitations of the 1940 Act associated with trading options on the Cboe Exchanges, the Exchange will not list

and trade the Shares on the Exchange until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. This restriction does not prevent the Adviser or the Funds from engaging in other transactions or receiving other services from the Cboe Exchanges or for which the Cboe Exchanges may receive a benefit, such as pricing services, provided such transactions and/or the receipt of such services is consistent with applicable statutes, rules, regulations, and interpretive positions of the Commission and its staff. As a result, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. Similarly, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds.²⁰

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to list and trade the Shares, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.²¹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²² which requires, among other things, that the Exchange’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission 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 Act²³ 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.

As noted above, the Commission has not yet issued an order granting exemptive relief to the Trust under the 1940 Act applicable to the activities of the Funds. Because of certain potential limitations of the 1940 Act associated with trading options on the Cboe Exchanges, the Exchange will not list and trade the Shares until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. As a result, because FLEX Options are listed exclusively on Cboe Options, the Funds will not be able to hold FLEX Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. Similarly, because Standardized S&P 500 Index Options are listed exclusively on Cboe Options, the Funds will not be able to hold Standardized S&P 500 Index Options until such time that appropriate exemptive and/or no-action relief is obtained from the Commission and/or its staff with respect to the Funds. In addition, the Exchange represents that, to the extent that any information in this proposal is or becomes inaccurate, the Exchange will submit a proposed rule change to reflect any new information before the Shares of the Funds will be listed on the Exchange.

Notwithstanding the conditions to commence listing and trading the Shares on the Exchange, as set forth above, the Commission notes that, according to the Exchange, except as it relates to the options portion of the Indexes described above, the Funds will meet and be subject to all other requirements of BZX Rule 14.11(c)(3) related to generic listing standards of the Indexes and other applicable requirements for series of Index Fund Shares on an initial and continued listing basis, including requirements related to the dissemination of key information such as the Index values,²⁴

¹⁶ For purposes of this proposal, the term ETF means Portfolio Depositary Receipts and Index Fund Shares as defined in Rule 14.11(b) and 14.11(c), respectively, and their equivalents on other national securities exchanges.

¹⁷ The term “Comparable ETF Options” will at any time include only the five ETFs based on the S&P 500 Index with the greatest options consolidated average daily exchange trading volume for the previous quarter. The Adviser expects that, to the extent that the Funds use Comparable ETF Options, such options contracts will primarily consist of options on the SPDR S&P 500 ETF (ticker: SPY).

¹⁸ 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 market funds.

¹⁹ In addition, the Exchange represents that, to the extent that any information in this proposal is or becomes inaccurate, the Exchange will submit a proposed rule change to reflect any new information before the Shares of the Funds will be listed on the Exchange.

²⁰ The Commission notes that additional information regarding the Funds, the Trust, and the Shares, including information about the FLEX Options, investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value, distributions, and taxes, among other things, can be found in Amendment 2 to the proposed rule change and the Registration Statement, as applicable. See Amendment 2 and Registration Statement, *supra* notes 9 and 10 and accompanying text, respectively.

²¹ 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).

²² 15 U.S.C. 78f(b)(5).

²³ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁴ The Exchange notes that BZX Rule 14.11(c)(3)(B)(ii) requires that the index value must be disseminated by one or more major market data vendors at least once every 15 seconds during regular market session; provided however, that if

net asset value, and the intraday indicative values, rules governing the trading of equity securities, trading hours, trading halts, surveillance, suitability, and the information circular, as set forth in Exchange rules applicable to Index Fund Shares and the orders approving such rules.

In support of its proposal, the Exchange has made the following additional representations:

(1) The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulation and other trading abuses. 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. The Exchange represents that the Financial Industry Regulatory Authority ("FINRA") conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement, and the Exchange is responsible for FINRA's performance under this regulatory services agreement. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-listed options contracts with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG") and may obtain trading information regarding trading in the Shares and exchange-listed options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-listed 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. The Exchange represents that 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

the index value does not change during some or all of the period when trading is occurring on the Exchange, then the last official calculated index value must remain available throughout the Exchange's trading hours. The value of the Indexes will not change during the period when trading is occurring on the Exchange and the last official calculated Index value will remain available throughout the Exchange's trading hours.

agreement. The Exchange also represents that the Funds will not hold any non-exchange-listed options contracts. Additionally, the Exchange or FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

(2) Quotation and last-sale information for exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority, and the intra-day, closing and settlement prices of exchange-listed 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. On each business day, before commencement of trading in the Shares on the Exchange during Regular Trading Hours, the portfolio that will form the basis for each Fund's calculation of the net asset value at the end of the business day will be provided on the Advisor's website.

(3) The issuer will provide and maintain a publicly available web tool for each of the Funds on its website that provides existing and prospective shareholders with certain information that may help inform their investment decisions. For each Fund, the information provided will include the start and end dates of the current outcome period, the time remaining in the outcome period, current net asset value, the 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 will provide information regarding the Fund's buffer. This information will include 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," will provide the specific web address for each Fund's web tool.

(4) BZX Rule 3.7(a) provides that a Member, before recommending a transaction in any security, must have reasonable grounds to believe that the recommendation is suitable for the customer based on any facts disclosed by the customer, after reasonable inquiry by the Member, as to the customer's other securities holdings and as to the customer's financial situation and needs. Interpretation and Policy .01 to Rule 3.7 provides that no Member shall recommend to a customer a transaction in any such product unless the Member has a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks of the recommended position. Prior to the commencement of trading, the Exchange will inform its Members of the suitability requirements of Rule 3.7 in an Information Circular. Specifically, Members will be reminded in the Information Circular that, in recommending transactions in these securities, they must have a reasonable basis to believe that (a) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member, and (b) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares.

(5) Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).

(6) Each Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.*, 2x or -2x) of its respective Index, and each Fund's use of derivative instruments will be collateralized.

(7) The Trust is required to comply with Rule 10A-3 under the Act²⁵ for the initial and continued listing of the Shares of the Funds, and a minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

(8) All statements and representations made in this filing regarding (a) the description of the portfolios, reference assets, and indexes, (b) limitations on portfolio holdings or reference assets, (c) dissemination and availability of index, reference asset, and intraday indicative

²⁵ See 17 CFR 240.10A-3.

values, or (d) the applicability of Exchange rules specified in this filing 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 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 Shares is not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under BZX Rule 14.12.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in Amendment No. 2 to the proposed rule change. Except as described herein, the Commission notes that the Shares must comply with all other applicable requirements of BZX Rule 14.11(c) to be listed and traded on the Exchange on an initial and continuing basis. The Commission further notes that the Shares of the Funds will not be listed and traded on the Exchange until any and all exemptive and/or no-action relief required under the 1940 Act has been obtained with respect to the Funds and the Shares and any conditions related thereto are satisfied.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act²⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-CboeBZX-2017-005), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83800; File No. SR-IEX-2018-16]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise the Threshold for Imposition of the Crumbling Quote Remove Fee

August 8, 2018.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 26, 2018, the Investors Exchange LLC ("IEX" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"),⁴ and Rule 19b-4 thereunder,⁵ IEX is filing with the Commission a proposed rule change to revise the threshold for imposition of the Crumbling Quote Remove Fee ("CQRF") to more narrowly tailor it to trading activity that is indicative of a deliberate trading strategy that may adversely affect execution quality on the Exchange. The text of the proposed rule change is available at the Exchange's website at www.iextrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule, pursuant to IEX Rule 15.110 (a) and (c), to revise the threshold for imposition of the CQRF to more narrowly tailor it to trading activity that is indicative of a deliberate trading strategy that may adversely affect execution quality on the Exchange.

The Exchange charges the CQRF to orders that remove resting liquidity when the crumbling quote indicator ("CQI") is on if such executions constitute at least 5% of the Member's volume executed on IEX and at least 1 million shares, on a monthly basis, measured on a per market participant identifier ("MPID") basis (the "CQRF Threshold"). Orders that exceed the 5% and 1 million share thresholds are assessed a fee of \$0.0030 per each incremental share executed at or above \$1.00 that exceeds the CQRF Threshold.⁶

Pursuant to IEX Rule 11.190(g), in determining whether quote instability or a crumbling quote exists, the Exchange utilizes real time relative quoting activity of certain Protected Quotations⁷ and a proprietary mathematical calculation (the "quote instability calculation") to assess the probability of an imminent change to the current Protected National Best Bid⁸ to a lower price or the Protected National Best Offer⁹ to a higher price for a particular security ("quote instability factor"). When the quoting activity meets predefined criteria and the quote instability factor calculated is greater than the Exchange's defined quote instability threshold, the System treats the quote as unstable and the CQI is on. During all other times, the quote is considered stable, and the CQI is off. The System independently assesses the stability of the Protected NBB and Protected NBO for each security. When the System determines that a quote,

⁶ Executions below \$1.00 are assessed a fee of 0.30% of TDV unless the Fee Code Combination results in a free execution. See Investors Exchange Fee Schedule, available on the Exchange public website.

⁷ Pursuant to Rule 11.190(g), the Protected Quotations of the New York Stock Exchange, Nasdaq Stock Market, NYSE Arca, Nasdaq BX, Cboe BZX Exchange, Cboe BYX Exchange, Cboe EDGX Exchange, and Cboe EDGA Exchange.

⁸ See, Rule 600(b)(42) under Regulation NMS.

⁹ See supra note 4 [sic].

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30-3(a)(12).