SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80169; File No. SR-BatsBZX-2016-80)

March 7, 2017

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to BZX Rule 14.11, Other Securities, and BZX Rule 14.12, Failure to Meet Listing Standards

I. Introduction

On November 18, 2016, Bats BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend BZX Rule ("Rule") 14.11 to add specific continued listing standards for exchange-traded products ("ETPs") and to amend Rule 14.12 to specify the delisting procedures for these products. The proposed rule change was published for comment in the Federal Register on December 7, 2016.[3] On January 18, 2017, the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] On March 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal.[5] On March 3, 2017, the Exchange filed

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 79450 (December 1, 2016), 81 FR 88284.

4 See Securities Exchange Act Release No. 79839, 82 FR 8452 (January 25, 2017).

5 In Amendment No. 1, the Exchange: (i) further amended Rule 14.11(a) to require a Company with securities listed under Rule 14.11 to provide the Exchange with prompt notification if the Company (rather than an Executive Officer of the Company) becomes aware of its non-compliance with the requirements of Rule 14.11; (ii) further amended Rule 14.11 to reflect that certain listing requirements apply on an initial and ongoing

Amendment No. 2 to the proposed rule change.[6] The Commission received nine comment letters on the proposed rule change.[7] The Commission is publishing this notice to solicit comments on Amendment Nos. 1 and 2 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposes to amend Rule 14.11 to specify continued listing requirements for products listed under that rule, which include products listed pursuant to Rule 19b-4(e) under

---

basis; (iii) further amended Rule 14.11 to consistently state that the Exchange will initiate delisting proceedings if continued listing requirements are not maintained; (iv) further amended Rule 14.11 to provide that the Exchange would initiate delisting proceedings due to an interruption to the dissemination of index, reference asset, or intraday indicative values (as applicable to the product) only if the interruption persists past the trading day in which it occurred; (v) further amended Rule 14.11 to consistently state that the Exchange will implement and maintain surveillance procedures for the applicable product; and (vi) made other technical, clarifying, and conforming changes throughout Rule 14.11. Amendment No. 1 is available at https://www.sec.gov/comments/sr-batsbzx-2016-80/batsbzx201680-1610929-135984.pdf.

6 In Amendment No. 2, the Exchange specified the implementation date for the proposed rule change and made clarifying and technical changes. Amendment No. 2 is available at https://www.sec.gov/comments/sr-batsbzx-2016-80/batsbzx201680-1610934-135985.pdf.

7 See Letters to Brent J. Fields, Secretary, Commission, from David W. Blass, General Counsel, Investment Company Institute, dated January 12, 2017 ("ICI Letter"); Anna Paglia, Head of Legal, Invesco PowerShares Capital Management LLC, dated February 10, 2017 ("PowerShares Letter"); Steven Price, SVP, Director of Distribution Services and Chief Compliance Officer, ALPS Distributors, Inc., ALPS Portfolio Solutions Distributor, Inc., dated February 10, 2017 ("ALPS Letter"); James E. Ross, Executive Vice President and Chairman, Global SPDR Business, State Street Global Advisors, dated February 13, 2017 ("SSGA Letter"); Samara Cohen, Managing Director, U.S. Head of iShares Capital Markets, Joanne Medero, Managing Director, Government Relations & Public Policy, and Deepa Damre, Managing Director, Legal & Compliance, BlackRock, Inc., dated February 14, 2017 ("BlackRock Letter"); Peter K. Ewing, Senior Vice President, Northern Trust Investments, Inc., dated February 14, 2017 ("NTI Letter"); Ryan Louvar, General Counsel, WisdomTree Asset Management, Inc., dated February 15, 2017 ("WisdomTree Letter"); Kevin McCarthy, Senior Managing Director, Nuveen Fund Advisors, LLC, dated February 15, 2017 ("Nuveen Letter"); and Matthew B. Farber, Assistant General Counsel, First Trust Advisors L.P., dated February 23, 2017 ("First Trust Letter").

the Act ("generically-listed products") and products listed pursuant to proposed rule changes filed with the Commission ("non-generically-listed products").[8]

The Exchange also proposes to amend Rule 14.11(a) to specify issuer notification requirements related to failures to comply with continued listing requirements. Specifically, the Exchange proposes to amend Rule 14.11(a) to require a company with securities listed under Rule 14.11 to promptly notify the Exchange after the company becomes aware of any non-compliance by the company with the requirements of the rule. As proposed, the Exchange would initiate delisting proceedings for a product listed under Rule 14.11 if any of its continued listing requirements (including those set forth in an Exchange Rule and those set forth in an applicable proposed rule change) is not continuously maintained.[9]

The Exchange also proposes to amend Rule 14.12 to specify the delisting procedures for products listed under Rule 14.11. Under proposed Rule 14.12(f)(2)(A), unless the company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when the company fails to meet a continued listing requirement contained in Rule 14.11. Under the proposed rule, the company would be required to submit its compliance plan within 45 calendar days of the Exchange staff's notification of deficiencies.

Finally, the Exchange proposes to make conforming and technical changes throughout Rule 14.11 to maintain consistency in its rules. For example, the Exchange proposes to consistently use the language "initiate delisting proceedings pursuant to Rule 14.12" when

---

8 See infra notes 33-35 and accompanying text.

9 Unlike failures to comply with other continued listing requirements, if there is an interruption to the dissemination of the reference asset, index, or intraday indicative values for a listed product, the Exchange would initiate delisting proceedings under Rule 14.12 only if the interruption persists past the trading day in which it occurred. See, e.g., proposed changes to Rules 14.11(b)(9)(B)(i)(b) and (e), and 14.11(c)(9)(B)(i)(b) and (e).

describing the delisting procedures for a product that fails to meet continued listing requirements;[10] consistently state that, if the index that underlies a series of Portfolio Depository Receipts or Index Fund Shares is maintained by a broker-dealer or fund advisor, the index shall be calculated by a third party who is not a broker-dealer or fund advisor;[11] consistently reflect that delisting "following the initial 12 month period following commencement of trading on the Exchange" only applies to the record/beneficial holder, number of shares issued and outstanding, and the market value of shares issued and outstanding requirements;[12] and consistently use the term "Regular Trading Hours" in the context of intraday indicative value dissemination.[13]

The Exchange proposes to implement the rule changes by October 1, 2017.

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the

---

10 See, e.g., proposed changes to Rules 14.11(b)(9)(B)(i) and 14.11(c)(9)(B)(i).

11 See proposed changes to Rules 14.11(b)(4)(B)(i), 14.11(b)(5)(A)(i), 14.11(c)(4)(C)(i), and 14.11(c)(5)(A)(i); see also Rule 14.11(b)(3)(B)(i) (currently stating that, for certain Portfolio Depository Receipts, "[i]f the index is maintained by a broker-dealer or fund advisor . . . the index shall be calculated by a third party who is not a broker-dealer or fund advisor") and Rule 14.11(c)(3)(B)(i) (currently stating that, for certain Index Fund Shares, "[i]f the index is maintained by a broker-dealer or fund advisor . . . the index shall be calculated by a third party who is not a broker-dealer or fund advisor").

12 See, e.g., proposed changes to Rule 14.11(e)(4)(E)(ii); see also, e.g., Rule 14.11(e)(8)(D)(ii)(a) (currently applying the 12-month threshold only to the record/beneficial holder, number of units issued and outstanding, and market value of units issued and outstanding requirements for Partnership Units).

13 See, e.g., proposed changes to Rule 14.11(b)(3)(C); see also, e.g., Rule 14.11(i)(4)(B)(i) (currently requiring the dissemination of intraday indicative values for Managed Fund Shares during Regular Trading Hours).

14 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).

proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the rules of a national securities exchange 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 received nine comment letters that express concerns regarding the proposal.[16] First, commenters question how an ETF, especially one that uses indexes established and maintained by unaffiliated third parties, would comply with the proposed rules, and how the Exchange would enforce them.[17] Commenters assert that it would be unrealistic to anticipate that an ETF could ensure that an unaffiliated index complies with the initial listing standards on an ongoing basis, and express concern that an equity-index ETF, through no action of its own, could see certain of the constituent securities of the unaffiliated index fall below the listing requirements.[18] One commenter believes that even if a third party index provider was amenable to changes to an underlying index that would allow an ETF to regain compliance with the continued listing standards, it is unlikely that the ETF would be able to formulate a compliance plan within 45 calendar days of the Exchange staff's notification.[19] Second, commenters argue that the proposal would provide for unfair discrimination because the proposed rules would

---

15 15 U.S.C. 78f(b)(5).

16 See supra note 7.

17 See ICI Letter at 1-2; see also PowerShares Letter at 1; SSGA Letter at 1; BlackRock Letter at 1-2; and Nuveen Letter at 1. The Commission notes that the ALPS Letter, NTI Letter, WisdomTree Letter, and First Trust Letter also express general support for all the views expressed in the ICI Letter.

18 See ICI Letter at 1-3; see also PowerShares Letter at 2; SSGA Letter at 1; BlackRock Letter at 2; and Nuveen Letter at 2.

19 See BlackRock Letter at 2.

result in differential treatment of ETFs as compared to other securities (e.g., common stock).[20] Commenters believe that the continued listing standards for equity securities generally differ from the initial listing standards, whereas the proposed ETF continued listing standards would be the same as the initial listing standards.[21] Third, commenters assert that the proposal provides no explanation or evidence regarding the potential manipulation of ETFs under the current rules, or how the proposal would reduce the potential for manipulation.[22] One commenter also believes that significant compliance enhancements could be required to ensure proper and continuous testing of securities held in an index, and questions how this type of testing would enhance investor protection.[23]

The Commission believes that the proposal is consistent with the Act. As the Commission previously stated, the development, implementation, and enforcement of standards governing the initial and continued listing of securities on an exchange are activities of critical importance to financial markets and the investing public.[24] Once a security has been approved for initial listing, continued listing criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained.

With respect to commenters' concerns regarding the inability of certain ETFs to assure compliance with the proposal, the Commission believes that a variety of means are available to

---

20 See ICI Letter at 2; see also PowerShares Letter at 1; SSGA Letter at 1; and Nuveen Letter at 1-2.

21 See ICI Letter at 2; see also Nuveen Letter at 1-2.

22 See ICI Letter at 2; see also PowerShares Letter at 1-2; SSGA Letter at 1; and Nuveen Letter at 2.

23 See BlackRock Letter at 2.

24 See, e.g., Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148, 55152 (September 6, 2011) (SR-BATS-2011-018).

ETP (including ETF) issuers to monitor for a product's compliance with the continued listing standards. For example, information regarding the composition of a third party index may be publicly available, or may be obtained from the index provider pursuant to provisions in the index licensing agreement, so that the ETP issuer can monitor its compliance on an ongoing basis. If an index approaches the thresholds set forth in the continued listing standards, the issuer may decide to engage in discussions with the index provider regarding potential modifications to the index so that the ETP can continue to be listed on the Exchange. If an index provider is unwilling to modify the index in order to comply with the Exchange's listing requirements, the Exchange may submit a rule proposal to continue to list the product based on the index.[25] Moreover, as noted below, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis,[26] so some ETP issuers should have experience complying with these requirements. With respect to commenters' questions regarding the Exchange's enforcement of the proposed continued listing requirements, the Commission notes that the Exchange is proposing to apply its existing delisting procedures, which allow for the time to regain compliance to be extended to as long as 180

---

25 The Commission also notes that the Exchange may preemptively submit a rule proposal to provide for the continued listing of a specific product where the underlying index is approaching thresholds in the continued listing requirements, but has not yet fallen below those thresholds (i.e., submit a rule proposal before the delisting procedures are triggered).

For an example of an exchange rule proposal to continue the listing of a product that no longer meets generic listing standards, see Securities Exchange Act Release No. 57320 (February 13, 2008), 73 FR 9395 (February 20, 2008) (SR-NYSEArca-2008-15).

26 See infra note 30 and accompanying text.

days,[27] to products listed under Rule 14.11, rather than adopting new delisting procedures for these products.

With respect to commenters' concerns that the proposed listing standards would treat ETPs fundamentally differently than other types of listed equity securities, the Commission notes that ETPs and other types of equity securities each have certain listing standards that are higher on an initial basis and lower on a continuing basis.[28] Similarly, ETPs and other types of equity securities each have certain listing standards that are the same on an initial and continuing basis.[29] In fact, the listing standards that address the index composition with respect to certain index-based ETPs already apply equally on an initial and ongoing basis.[30]

---

27 See Rule 14.12(f)(2)(B) (stating that, upon review of a plan of compliance, Exchange staff may, among other things, grant an extension of time to regain compliance not greater than 180 calendar days from the date of staff's initial notification, unless the company is currently under review by an Adjudicatory Body for a Staff Delisting Determination). Exchange staff may also extend the 45-calendar day period for the submission of a compliance plan by 5 calendar days upon good cause shown. See Rule 14.12(f)(2)(C).

28 See, e.g., Rule 14.11(e)(5), Interpretations and Policies .04(a) (requiring a minimum of 100,000 shares of a series of Currency Trust Shares to be outstanding at commencement of trading) and Rule 14.11(e)(5)(E)(ii)(b) (requiring 50,000 Currency Trust Shares issued and outstanding for continued listing).

29 See, e.g., Rule 14.8(b)(1)(B) (requiring at least 1,100,000 publicly held shares for the initial listing of primary equity securities on BZX); Rule 14.8(e)(2)(B)(ii) (requiring at least 1,100,000 publicly held shares for the continued listing of primary equity securities on BZX under the Market Value Standard); and Rule 14.8(e)(2)(C)(ii) (requiring at least 1,100,000 publicly held shares for the continued listing of primary equity securities on BZX under the Total Assets/Total Revenue Standard).

30 See Rule 14.11(d)(2)(K)(iii) (setting forth the initial and continued listing requirements for Fixed Income Index-Linked Securities and stating that "[t]he Exchange will commence delisting or removal proceedings if any of the initial listing criteria described above are not continuously maintained"). The Commission also notes that ETPs are structurally different from other types of equity securities. See Securities Exchange Act Release No. 53142 (January 19, 2006), 71 FR 4180, 4182 and 4187 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities, stating that "[a]n Index Security, just like an ETF, derives its value by reference to the underlying index. For this reason, the Commission has required that markets that list

Finally, with respect to commenters' questions regarding the purpose of the proposal and its impact on the potential for manipulation and investor protection, the Commission notes that, in approving a wide variety of ETP listing standards, including standards that apply to underlying indexes or portfolios, the Commission has consistently explained that these standards, among other things,[31] are intended to reduce the potential for manipulation by assuring that the

---

index based securities monitor the qualifications of not just the actual security (e.g., the ETF, index option, or Index Securities), but also of the underlying indexes (and of the index providers)," and where the NASD stated that "[i]n contrast to a typical corporate security (e.g., a share of common stock of a corporation), whose value is determined by the interplay of supply and demand in the marketplace, the fair value of an index-based security can be determined only by reference to the underlying index itself, which is a proprietary creation of the particular index provider. For this reason, the Commission has always required that markets that list or trade index-based securities continuously monitor the qualifications of not just the actual securities being traded (e.g., exchange-traded funds ('ETF'), index options, or Index Securities), but also of the underlying indexes and of the index providers.").

31 See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that "the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities" and that "the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs" and that "by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs"); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that "[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities"); 34758 (September 30, 1994), 59 FR 50943, 50945-46 (October 6, 1994) (SR-NASD-94-49) (approving listing standards for Selected Equity-Linked Debt Securities ("SEEDS") and stating that "the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying SEEDS," and where the NASD stated that "the proposed numerical, quantitative listing standards should ensure that only substantial companies capable of meeting their contingent obligations created by SEEDS are able to list such products on Nasdaq").

ETP is sufficiently broad-based, and that the components of an index or portfolio underlying an ETP are adequately capitalized, sufficiently liquid, and that no one stock dominates the index.[32]

For exchange listing standards to effectively achieve their goals, including to effectively address the potential for manipulation of a listed ETP, their application cannot be linked to only a single point in time (i.e., the time of initial listing). Instead, they must be applied on an ongoing basis. The Commission notes that, currently, certain provisions within Rule 14.11 impose specific listing requirements on an initial basis, without imposing ongoing listing requirements that are intended to achieve the same goals as these initial listing requirements.[33]

---

[32] See, e.g., Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66996-97 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that standards related to the composition of an index or portfolio underlying an ETF "are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index" and that "[t]aken together, the Commission finds that these standards are reasonably designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of any underlying index or portfolio, and that when applied in conjunction with the other applicable listing requirements, will permit the listing only of ETFs that are sufficiently broad-based in scope to minimize potential manipulation"); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that the listing standards for Index-Linked Securities, including minimum market capitalization, monthly trading volume, and relative weight requirements "are designed to ensure that the trading markets for index components underlying Index Securities are adequately capitalized and sufficiently liquid, and that no one stock dominates the index. The Commission believes that these requirements should significantly minimize the potential for [] manipulation."); 78396 (July 22, 2016), 81 FR 49698, 49702 (July 28, 2016) (SR-BATS-2015-100) (approving generic listing standards for Managed Fund Shares, noting the Exchange's statement that the proposed requirements for Managed Fund Shares are based in large part on the generic listing criteria currently applicable to Index Fund Shares and stating that "the Commission believes that this is an appropriate approach with respect to underlying asset classes covered by the existing generic standards, because the mere addition of active management to an ETF portfolio that would qualify for generic listing as an index-based ETF should not affect the portfolio's susceptibility to manipulation").

[33] Moreover, certain of the listing requirements do not explicitly state that they apply on an ongoing, as well as initial, basis. In these cases, the proposal would make explicit that

To fill this gap, the proposal would specify that certain listing requirements in Rule 14.11 apply both on an initial and ongoing basis, rather than only at the time of initial listing.[34] Also, with respect to non-generically listed products, the Exchange proposes to amend Rule 14.11(a) to state that any of the statements or representations in the proposed rule change regarding the index composition, the description of the portfolio or reference asset, 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 specified in the proposed rule change constitute continued listing requirements.[35]

Because the proposal specifies continued listing requirements for products listed pursuant to Rule 14.11, the Commission believes the proposal is designed to achieve on a continuing basis the goals of the listing requirements, including ensuring that the Exchange lists products that are

---

the requirements apply both on an initial and ongoing basis. See, e.g., proposed changes to Rule 14.11(b)(3)(B)-(C) (making explicit that, for Portfolio Depository Receipts, requirements related to index methodology and index value dissemination, as well as intraday indicative value dissemination, apply on an initial and ongoing basis); proposed changes to Rule 14.11(d)(2)(E) (making explicit that, for Linked Securities, requirements related to tangible net worth and earnings apply on an initial and ongoing basis); proposed changes to Rule 14.11(e)(3), Interpretations and Policies .03 (making explicit that, for Trust Certificates, requirements related to the qualifications of a trustee and changes to a trustee apply on an initial and ongoing basis).

34 For example, current Rule 14.11(b)(3)(A)(i) sets forth requirements for component stocks of an index or portfolio underlying a series of generically-listed Portfolio Depository Receipts, which apply upon initial listing. These requirements include, for example, minimum market value, minimum monthly trading volume, and concentration limits for the component stocks. The proposal would specify that these requirements apply both on an initial and continued basis.

35 The Commission notes that it has approved proposed rule changes for the listing and trading of ETPs that included similar representations. See, e.g., Securities Exchange Act Release No. 77548 (April 6, 2016), 81 FR 21626, 21630 (April 12, 2016) (SR-NASDAQ-2015-161). The Commission also notes that similar types of requirements exist in Rule 14.11. See, e.g., Rule 14.11(b)(3) (setting forth, among other things, index composition requirements and intraday indicative value dissemination requirements for certain generically-listed Portfolio Depository Receipts).

not susceptible to manipulation and maintaining fair and orderly markets for the listed products. In particular,[36] the Commission believes that the proposal is designed to ensure that stocks with substantial market capitalization and trading volume account for a substantial portion of the weight of an index or portfolio underlying a listed product;[37] provide transparency regarding the components of an index or portfolio underlying a listed product;[38] ensure that there is adequate liquidity in the listed product itself;[39] and provide timely and fair disclosure of useful information that may be necessary to price the listed product.[40] Moreover, the Commission believes that the proposal to require an issuer to notify the Exchange of its failures to comply with continued listing requirements would supplement the Exchange's own surveillance of the listed products.[41]

---

36 See also supra notes 31-32 (noting additional goals of the ETP listing standards).

37 For example, as proposed, the requirements under Rule 14.11(b)(3)(A), including minimum market value and minimum monthly trading volume requirements for components of the index or portfolio underlying Portfolio Depository Receipts, would apply both on an initial and ongoing basis. Also, for non-generically listed products, the proposal would provide that statements or representations made in the proposed rule changes relating to the index composition and the description of the portfolio, among other things, constitute continued listing requirements. See proposed changes to Rule 14.11(a).

38 For example, as proposed, the requirements under Rule 14.11(b)(3)(A), including the requirement that components of the index or portfolio underlying Portfolio Depository Receipts be exchange-listed and NMS stocks, would apply both on an initial and ongoing basis.

39 For example, the Exchange proposes to amend Rule 14.11(e)(12)(B) to explicitly state that listing requirements for SEEDS apply both on an initial and ongoing basis, including, for example, the minimum public distribution and the minimum market value of an issue of SEEDS.

40 For example, the proposed changes to Rule 14.11(b)(3)(B)-(C) would make explicit that the requirements related to the dissemination of the value of the index underlying Portfolio Depository Receipts and the intraday indicative value for Portfolio Depository Receipts apply on an initial and ongoing basis.

41 The Commission notes that the concept of issuer notification is not novel. For example, in connection with its proposal to adopt generic listing standards for Managed Fund

As noted above, the proposal specifies the delisting procedures for products listed pursuant to Rule 14.11. The Commission believes that the proposed amendments to Rule 14.12 would provide transparency regarding the process that the Exchange will follow if a listed product fails to meet its continued listing requirements. Also, as noted above, the process surrounding compliance plans already exists in Rule 14.12. As a result, the proposed delisting procedures are not novel.

Finally, the Commission believes that the conforming and technical proposed changes do not raise novel issues, are designed to further the goals of the listing standards, and provide clarity and consistency in the Exchange's rules.

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Act.

IV. Accelerated Approval of Amendment Nos. 1 and 2

As noted above, in Amendment No. 1, the Exchange: (i) further amended Rule 14.11(a) to require a Company with securities listed under Rule 14.11 to provide the Exchange with prompt notification if the Company (rather than an Executive Officer of the Company) becomes aware of its non-compliance with the requirements of Rule 14.11; (ii) further amended Rule 14.11 to reflect that certain listing requirements apply on an initial and ongoing basis; (iii) further amended Rule 14.11 to consistently state that the Exchange will initiate delisting proceedings if continued listing requirements are not maintained; (iv) further amended Rule 14.11 to provide

---

Shares, the Exchange stated that, prior to listing pursuant to the generic listing standards, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Fund 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. See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698, 49702 (July 28, 2016) (SR-BATS-2015-100).

that the Exchange would initiate delisting proceedings due to an interruption to the dissemination of index, reference asset, or intraday indicative values (as applicable to the product) only if the interruption persists past the trading day in which it occurred; (v) further amended Rule 14.11 to consistently state that the Exchange will implement and maintain surveillance procedures for the applicable product; and (vi) made other technical, clarifying, and conforming changes throughout Rule 14.11. The Commission believes that Amendment No. 1 furthers the goals of the proposed rule change as discussed above, and enhances consistency between the Exchange's proposal and a recently approved proposal from another exchange.[42] In Amendment No. 2, the Exchange specified the implementation date for the proposed rule change and made clarifying and technical changes. The Commission believes that Amendment No. 2 provides clarity and does not alter the substance of the proposed rule change. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[43] to approve the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

V. Solicitation of Comments on Amendment Nos. 1 and 2

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 1 and 2 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2016-80 on the subject line.

---

42 See Securities Exchange Act Release No. 79784 (January 12, 2017), 82 FR 6664 (January 19, 2017) (SR-NASDAQ-2016-135).

43 15 U.S.C. 78s(b)(2).

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsBZX-2016-80. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BatsBZX-2016-80 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR-BatsBZX-2016-80), as modified by Amendment Nos. 1 and 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Eduardo A. Aleman
Assistant Secretary

---

44 15 U.S.C. 78s(b)(2).

45 17 CFR 200.30-3(a)(12).