

beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities. Applicant submits that the descendants of J.A. Jeffrey are numerous and Applicant does not wish to exclude any Family Member from investing in Applicant.

3. Applicant submits that the exemption requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant further submits that the exemption requested is consistent with relief granted by the Commission to other private investment companies that have more than 100 beneficial owners and that are substantially owned and controlled by a single family.

4. Applicant submits that one of the key purposes of the Act is to ensure that every investment company properly identifies and mitigates conflicts of interest and legal, compliance, financial, and operational risks. Applicant submits that the Board's structure and practice, including its review of compliance with legal and regulatory requirements, evaluation of operational risk management processes, establishment of a Code of Ethics (addressing, among other things, conflicts of interest) and provision of periodic reports to investors, are designed to protect Applicant's investors. Applicant submits that Applicant's "co-op" style, where no money is taken off the top for management (*i.e.*, management does not receive a carried interest or other share of profits), no performance fees are paid, and management's incentives otherwise are aligned with clients, provides further protection. Applicant represents that its efforts to mitigate conflicts of interest are at least as robust as those the Commission historically has required in similar exemptive relief.

#### **Applicant's Conditions**

Applicant agrees that the order of the Commission granting the requested relief shall be subject to the following conditions, which conditions shall continue for so long as Applicant seeks to rely on such relief:

1. Interests in Applicant have not been and will not be offered or sold to the public. Applicant will neither admit as a new investor, nor permit the assignment or transfer of any interest in Applicant to, any individual or entity that is not a Family Client.

2. Applicant at all times will be controlled by Family Members and/or "family entities" (as defined under the

Family Office Rule) that are Family Clients.

3. Applicant will not have as an investment adviser any investment adviser other than (i) a Commission-registered investment adviser, (ii) a "family office" as defined in the Family Office Rule or (iii) an entity that has obtained an order from the Commission declaring it to be a person not within the intent of the Advisers Act to the extent that it cannot satisfy all of the conditions to be a "family office", as defined in the Family Office Rule.

4. A majority of the Board will consist of Family Members; provided, however, that if by reason of the death, disqualification or bona fide resignation of any director or directors, a majority of the directors are not Family Members, the vacancy or vacancies will be filled in order to reestablish such majority within 90 days (consistent with Act Rule 10e-1(a) under the Act).

5. Applicant will continue to hold annual meetings of its investors for the purpose of electing Board members and transacting such other business as may properly come before such meetings.

6. The Board will meet no less frequently than quarterly to review Applicant's investment portfolio to review compliance with all applicable investment restrictions and policies.

7. Applicant will not knowingly make available to any broker or dealer registered under the Securities Exchange Act of 1934, as amended, any financial information concerning Applicant for the purpose of knowingly enabling such broker or dealer to initiate any regular trading market in any interests in Applicant.

8. Applicant will provide each investor in Applicant annual financial statements audited by an independent public accountant.

9. Applicant will comply with the provisions set forth in subparagraphs (A)(i) and (B)(i) of Section 12(d)(1) of the Act as if Applicant were an investment company relying on the exemption set forth in Section 3(c)(1) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

**Eduardo A. Aleman,**

*Assistant Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Extension: Rule 104; SEC File No. 270-411, OMB Control No. 3235-0465]

### **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.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rule 104 of Regulation M (17 CFR 242.104), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 104 permits stabilizing by a distribution participant during a distribution so long as the distribution participant discloses information to the market and investors. This rule requires disclosure in offering materials of the potential stabilizing transactions and that the distribution participant inform the market when a stabilizing bid is made. It also requires the distribution participants (*i.e.*, the syndicate manager) to maintain information regarding syndicate covering transactions and penalty bids and disclose such information to the Self-Regulatory Organization.

There are approximately 848 respondents per year that require an aggregate total of 170 hours to comply with this rule. Each respondent makes an estimated 1 annual response. Each response takes approximately 0.20 hours (12 minutes) to complete. Thus, the total compliance burden per year is 170 hours. The total internal labor cost of compliance for the respondents is approximately \$11,050.00 per year, resulting in an internal cost of compliance of about \$13.03 (*i.e.*, \$11,050.00/848 responses) per response.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: [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: *Shagufta.Ahmed@omb.eop.gov*; and (ii) Pamela Dyson, Director/Chief Information Officer, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or by sending an email to: *PRA\_Mailbox@sec.gov*. Comments must be submitted within 30 days of this notice.

Dated: March 8, 2017.

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80169; File No. SR-BatsBZX-2016-80]

### 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

March 7, 2017.

#### 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> On March 1, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the original proposal.<sup>5</sup> On March 3,

2017, the Exchange filed Amendment No. 2 to the proposed rule change.<sup>6</sup> The Commission received nine comment letters on the proposed rule change.<sup>7</sup> 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

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 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>.

<sup>6</sup> 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>.

<sup>7</sup> 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”).

pursuant to Rule 19b-4(e) under the Act (“generically-listed products”) and products listed pursuant to proposed rule changes filed with the Commission (“non-generically-listed products”).<sup>8</sup>

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.<sup>9</sup>

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 describing the delisting procedures for a product that fails to meet continued listing requirements;<sup>10</sup> 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

<sup>8</sup> See *infra* notes 33–35 and accompanying text.

<sup>9</sup> 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).

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

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

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

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

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

<sup>5</sup> In Amendment No. 1, the Exchange: (i) Further amended Rule 14.11(a) to require a Company with