



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85701; File No. SR-CboeBZX-2019-016]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust to Hold Certain Instruments in a Manner that May Not Comply with Rule 14.11(i), Managed Fund Shares

April 22, 2019.

I. Introduction

On March 5, 2019, 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 amend the listing requirements applicable to shares (“Shares”) of the JPMorgan Core Plus Bond ETF (“Fund”), which Shares are currently listed on the Exchange pursuant to the generic listing standards applicable to Managed Fund Shares under BZX Rule 14.11(i) (Managed Fund Shares). The proposed rule change was published for comment in the Federal Register on March 22, 2019.³ On March 28, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.⁴ The Commission has

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85349 (March 18, 2019), 84 FR 10874.

⁴ In Amendment No. 1, the Exchange: (a) clarified that (i) the Shares are currently listed and traded on the Exchange pursuant to the generic listing standards applicable to Managed Fund Shares under BZX Rule 14.11(i) (“Generic Listing Standards”), (ii) the

received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

Fund currently meets the Generic Listing Standards, and (iii) the Fund will continue to meet the Generic Listing Standards unless and until the proposed rule change is approved; (b) clarified that the Exchange will measure derivatives holdings using gross notional value of the derivatives as required by the Generic Listing Standards (rather than using mark-to-market value of derivatives); (c) stated that in response to adverse market, economic, or political conditions, the Fund reserves the right to invest in cash and Cash Equivalents (as defined below), without limitation, as determined by the Adviser; (d) clarified the types of mortgage-backed securities that are permitted investments of the Fund; (e) clarified that, consistent with the requirements of BZX Rule 14.11(i)(4)(C)(ii)(e), the Fund will limit aggregate investments in asset-backed securities and Private MBS (as defined below) to 20% of the weight of the fixed income portion of the Fund's portfolio; (f) represented that the Fund's holdings in Cash Equivalents and over-the-counter ("OTC") derivative instruments will be in compliance with the limitations provided in BZX Rules 14.11(i)(4)(C)(iii) and 14.11(i)(4)(C)(v), respectively, and that both listed and OTC derivative instruments will be in compliance with the limitations of BZX Rule 14.11(i)(4)(C)(vi); (g) clarified that because the Fund will not purchase Equity Holdings (as defined below) and will only hold such instruments if they are issued to the Fund by virtue of its holdings in Bonds (as defined below), Equity Holdings are excluded from the description of the Fund's permitted investments; (h) clarified that while listed derivatives positions are limited to 20% of the Fund's net assets, the gross notional exposure related to such positions can be significantly larger, and thus, the Fund may have gross notional exposure to Eurodollar and G-7 Sovereign Futures and Options (as defined below) in excess of 65%; (i) provided updated data on open interest in Eurodollar and G-7 Sovereign Futures and Options; (j) represented that the Fund will adhere to its stated investment objective under Normal Market Conditions (as defined below); (k) represented that the Exchange, the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, or both may obtain information regarding trading in the Shares and the underlying listed instruments held by the Fund with the Intermarket Surveillance Group ("ISG"), other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement; (l) provided additional justification as to why the proposed changes to the Fund's investments are consistent with the Act even though the Fund's proposed holdings would no longer meet certain of the Generic Listing Standards; and (m) made other clarifications, corrections, and technical changes to the proposal. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2019-016/srcboebzx2019016-5299386-183807.pdf>.

II. Description of the Proposal, as Modified by Amendment No. 1⁵

The Shares are currently listed on the Exchange pursuant to the Generic Listing Standards and began trading on January 30, 2019. The Shares are offered by the J.P. Morgan Exchange-Traded Fund Trust (“Trust”), which is registered as an open-end management investment company under the Investment Company Act of 1940 (“1940 Act”).⁶ J.P. Morgan Investment Management, Inc. is the investment adviser (“Adviser”) to the Fund.⁷ JPMorgan Chase Bank, N.A. is the administrator, custodian, and transfer agent for the Trust. JPMorgan Distribution Services, Inc. serves as the distributor for the Trust.

The Exchange states that the Fund is an actively managed exchange-traded fund that seeks a high level of current income by investing primarily in a diversified portfolio of high-

⁵ Additional information regarding the Fund, the Trust (as defined below), and the Shares can be found in Amendment No. 1 and the Registration Statement. See supra note 4 and infra note 6.

⁶ According to the Exchange, on January 23, 2019, the Trust filed with the Commission its registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333-191837 and 811-22903) (“Registration Statement”). In addition, according to the Exchange, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No.31990 (February 9, 2016) (File No. 812-13761).

⁷ The Exchange represents that the Adviser is not a registered broker-dealer but is affiliated with multiple broker-dealers and has implemented and will maintain “fire walls” with respect to such broker-dealers regarding access to information concerning the composition of and/or changes to the Fund’s portfolio. In addition, the Exchange represents that the Adviser’s personnel who make decisions regarding the Fund’s portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition of 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.

medium-, and low-grade debt securities.⁸ The Exchange states that, 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 has submitted this proposal in order to allow the Shares to continue listing and trading on the Exchange while holding certain instruments in a manner that may not comply with the Generic Listing Standards, as further described below.

A. The Fund's Primary Investments

The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,⁹ at least 80% of its net assets in "Bonds," as defined herein. For purposes of the proposal, the Exchange defines the term "Bond" to include only the following instruments:

- corporate bonds;
- U.S. government and agency debt securities;
- asset-backed securities ("ABS");¹⁰

⁸ The Exchange states that the Fund plans to employ a strategy very similar to that currently employed by JPMorgan Core Plus Bond Fund, a mutual fund operated by the Adviser since March 5, 1993.

⁹ As defined in Rule 14.11(i)(3)(E), 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. The Exchange states that in response to adverse market, economic, or political conditions, the Fund reserves the right to invest in cash and Cash Equivalents, as defined below, without limitation, as determined by the Adviser.

¹⁰ According to the Exchange, ABS are securitized products in connection with which the securities issued, which may be issued by either a U.S. or a foreign entity, are collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable. The Exchange states that for purposes of the filing, ABS exclude: (i) MBS (as defined below); (ii) a small business administration backed

- municipal securities;
- credit linked notes;
- participation notes;
- collateralized debt obligations;
- agency, non-agency, and stripped mortgage-related and mortgage-backed securities (“MBS”) (including adjustable rate mortgage loans);¹¹
- convertible securities (including contingent convertible securities);
- preferred stock;
- loan participations and assignments;
- commitments to loan assignments;
- variable and floating rate instruments;

ABS traded “To Be Announced” or in a specified pool transaction as defined in FINRA Rule 6710(x); and (iii) U.S. or foreign collateralized debt obligations.

¹¹ The Exchange states that MBS are securities that represent direct or indirect participations in, or are collateralized by and payable from, mortgage loans secured by real property and which may be issued or guaranteed by government-sponsored entities (“GSEs”), such as Fannie Mae or Freddie Mac, or issued or guaranteed by agencies of the U.S. government, such as the Government National Mortgage Association (“Ginnie Mae”). The Exchange states that for purposes of the proposal, MBS include only collateralized mortgage obligations (“CMOs”), which are debt obligations collateralized by mortgage loans or mortgage pass-through securities. Typically, CMOs are collateralized by Ginnie Mae, Fannie Mae or Freddie Mac certificates, but they may also be collateralized by whole loans or pass-through securities issued by private issuers (i.e., issuers other than U.S. government agencies or GSEs) (“Private MBS”). Payments of principal and of interest on the mortgage-related instruments collateralizing the MBS, and any reinvestment income thereon, provide the funds to pay debt service on the CMOs. In a CMO, a series of bonds or certificates is issued in multiple classes. Each class of CMOs, often referred to as a “tranche” of securities, is issued at a specified fixed or floating coupon rate and has a stated maturity or final distribution date.

- commercial paper; and
- foreign and emerging market debt securities.

The Exchange states that the Adviser intends to hold ABS and MBS as part of a strategy designed to manage portfolio risk by diversifying away from corporate debt and to take advantage of certain market environments. Consistent with the requirements of BZX Rule 14.11(i)(4)(C)(ii)(e), the Fund will limit aggregate investments in ABS and Private MBS (together, “ABS/Private MBS”) to 20% of the weight of the fixed income portion of the Fund’s portfolio.

The Adviser will invest across the credit spectrum to provide the Fund exposure to various credit ratings. Under Normal Market Conditions, at least 65% of the Fund’s assets will be invested in securities that, at the time of purchase, are rated investment grade by a nationally recognized statistical rating organization or in securities that are unrated but are deemed by the Adviser to be of comparable quality. Among others, such securities include U.S. or foreign MBS and U.S. or foreign ABS. Under Normal Market Conditions, the Fund will not invest more than 35% of its assets in securities rated below investment grade. The Fund’s average weighted maturity will ordinarily range between five and twenty years.

B. Other Permitted Investments of the Fund

Under Normal Market Conditions, the Fund may also invest up to 20% of its net assets in the following:

- cash and certain Cash Equivalents¹² that are not otherwise captured under the definition of Bond;

¹² As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following:

- the following listed derivative instruments:
 - futures and options (including options on futures) referencing Eurodollars and sovereign debt issued by the United States (i.e., treasury securities) and other “Group of Seven” countries,¹³ where such futures and options contracts are listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement (“Eurodollar and G-7 Sovereign Futures and Options”);
 - the following additional types of futures: debt futures, interest rate futures, index futures, foreign exchange futures, and equity futures;
 - the following additional types of options: equity options, Treasury options, options on Treasury futures, and foreign exchange options; and
 - the following types of swaps: interest rate swaps, foreign exchange swaps, credit default swaps (including single-name and index reference pools) (“CDS”), loan credit default swap indices, and inflation-linked swaps; and
- the following OTC derivative instruments:
 - the following types of options: index options and foreign exchange options;

(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.

¹³ The Exchange states that Group of Seven (or “G-7”) countries include the United States, Canada, France, Germany, Italy, Japan and the United Kingdom.

- swaptions;
- the following types of swaps: CDS, foreign exchange swaps, loan credit default swap indices, inflation-linked swaps, interest rate swaps, and non-dollar swaps;
- non-deliverable forward contracts; and
- foreign exchange forward contracts.

The Exchange states that the Fund's holdings in Cash Equivalents and OTC derivative instruments will be in compliance with the limitations provided in BZX Rules 14.11(i)(4)(C)(iii)¹⁴ and 14.11(i)(4)(C)(v),¹⁵ respectively. In addition, the Exchange states that the Fund's holdings in both listed and OTC derivative instruments will be in compliance with the limitations of BZX Rule 14.11(i)(4)(C)(vi).¹⁶

The Exchange states that the Fund, by virtue of its Bond holdings, may be issued certain equity instruments ("Equity Holdings") that may not meet the requirements of Rule 14.11(i)(4)(C)(i).¹⁷ The Adviser expects that the Fund will generally acquire such instruments through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities. The Exchange states that the Fund will not purchase such instruments and

¹⁴ Rule 14.11(i)(4)(C)(iii) contains Generic Listing Standards for cash and Cash Equivalents.

¹⁵ Rule 14.11(i)(4)(C)(v) requires that the aggregate gross notional value of OTC derivatives not exceed 20% of the weight of the portfolio (including gross notional exposures).

¹⁶ Rule 14.11(i)(4)(C)(iv) provides that to the extent listed or OTC derivatives are used to gain exposure to individual equities and/or fixed income securities, or to indexes of equities and/or indexes of fixed income securities, the aggregate gross notional value of such exposure will meet the Generic Listing Standards applicable to equities and fixed income securities (including gross notional exposures), respectively.

¹⁷ Rule 14.11(i)(4)(C)(i) contains Generic Listing Standards for equity securities.

the Fund will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders. The Exchange states that such Equity Holdings will not constitute more than 10% of the Fund's net assets.¹⁸

C. The Fund's Investment Restrictions

The Exchange states that the Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).¹⁹ That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A). The Fund will only use the derivatives described above and the Fund's use of derivative instruments will be collateralized.

D. Application of the Generic Listing Standards

The Exchange has submitted this proposal in order to allow the Fund to hold instruments in a manner that may not comply with the Generic Listing Standards, as further described below. The Exchange represents that, except as described below, the Fund would continue to satisfy all of the Generic Listing Standards under BZX Rule 14.11(i)(4)(C) and to comply with all other

¹⁸ The Exchange states that the Fund will not purchase Equity Holdings and, as such, they are excluded from both the 80% and the 20% buckets described above.

¹⁹ The Exchange states that the Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's board of directors and in accordance with the 1940 Act (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. The Exchange states that these procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance.

applicable continued listing requirements for Managed Fund Shares under BZX Rule 14.11(i). The Exchange represents that the Fund, which is currently listed and trading pursuant to the Generic Listing Standards, will continue to meet the Generic Listing Standards unless and until this proposal is approved.

The Exchange proposes that the Fund will not comply with Rule 14.11(i)(4)(C)(ii)(d), which requires that “component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) from issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.” The Exchange instead proposes that the fixed income portion of the portfolio, excluding ABS and Private MBS, will satisfy this 90% requirement.

In addition, the Exchange proposes that the Fund will not comply with Rule 14.11(i)(4)(C)(iv)(b), which 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), 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).” Specifically, the Exchange proposes that the Fund be exempt from these requirements as they relate to the Fund’s holdings

in Eurodollar and G-7 Sovereign Futures and Options.²⁰ The Exchange states that the Fund's holdings in other listed derivatives, when calculated independently of the Fund's holdings in Eurodollar and G-7 Sovereign Futures and Options, will meet the requirements of Rule 14.11(i)(4)(C)(iv)(b).

Finally, the exchange proposes that the Fund will not comply with Rule 14.11(i)(4)(C)(i), which contains Generic Listing Standards for equity securities in the portfolio. As discussed above, the Fund, by virtue of its other holdings, may be issued Equity Holdings that may not meet the requirements of Rule 14.11(i)(4)(C)(i). The Exchange represents that the Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders. In addition, the Exchange represents that the Equity Holdings will not constitute more than 10% of the Fund's net assets.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, 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, as modified by Amendment No. 1, 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

²⁰ The Exchange states that, while listed derivatives positions are limited to 20% of the Fund's net assets, the gross notional exposure related to such positions can be significantly larger. As such, the Fund may have gross notional exposure to Eurodollar and G-7 Sovereign Futures and Options in excess of 65%.

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).

system, and, in general, to protect investors and the public interest.

The Shares would continue to satisfy all of the Generic Listing Standards except for the requirements of Rule 14.11(i)(4)(C)(ii)(d), Rule 14.11(i)(4)(C)(iv)(b), and Rule 14.11(i)(4)(C)(i), as described specifically herein.²³

As discussed above, the Fund will not meet the requirement that securities comprising at least 90% of the fixed income weight of the Fund's portfolio meet one of the criteria set forth in BZX Rule 14.11(i)(4)(C)(ii)(d) because the ABS/Private MBS that the Fund may invest in would not satisfy such requirement.²⁴ Instead, the Exchange proposes that the fixed income portion of the portfolio excluding ABS/Private MBS would satisfy this 90% requirement. The Exchange states that the Fund's investment portfolio will be diverse, and that the Adviser closely monitors investments to ensure maintenance of credit and liquidity standards.²⁵ The Commission believes the diversification of the Fund's portfolio, and the fact that the fixed income portion of the portfolio, excluding ABS and Private MBS, will comply with Rule 14.11(i)(4)(C)(ii)(d), should mitigate manipulation concerns relating to the Shares. The Commission notes that it recently approved a similar exception to the Generic Listing Standards for an issue of Managed Fund Shares permitted to invest in fixed income securities.²⁶ The Commission also notes that, consistent with the requirements of BZX Rule 14.11(i)(4)(C)(ii)(e), the Fund will limit aggregate

²³ See supra Section II.D.

²⁴ The Exchange states that ABS/Private MBS are generally issued by special purpose vehicles, so the criteria in Rule 14.11(i)(4)(C)(ii)(d) regarding an issuer's market capitalization and the remaining principal amount of an issuer's securities are typically unavailable with respect to ABS/Private MBS, even though such ABS/Private MBS may own significant assets. See Amendment No. 1, at 46, n. 36.

²⁵ See Amendment No. 1, at 46-47.

²⁶ See Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR-Nasdaq-2017-128) (approving the listing and trading of shares of the Western Asset Total Return ETF).

investments in ABS/Private MBS to 20% of the weight of the fixed income portion of the Fund's portfolio.

Also as discussed above, the Fund's investments in Eurodollar and G-7 Sovereign Futures and Options will not comply with the 65% and 35% concentration limits in BZX Rule 14.11(4)(C)(iv)(b). The Commission believes that manipulation concerns relating to the Shares are sufficiently mitigated because Eurodollar and G-7 Sovereign Futures and Options are highly liquid and will be listed on an exchange that is an ISG member or an exchange with which the Exchange has a comprehensive surveillance sharing agreement. In addition, the Exchange represents that all other listed derivatives that the Fund may invest in will comply with the concentration requirements set forth in the Generic Listing Standards.²⁷ The Commission notes that it recently approved a similar exception to the Generic Listing Standards for an issue of Managed Fund Shares permitted to invest in Eurodollar and G-7 Sovereign Futures and Options.²⁸

Finally, the Fund's investments in Equity Holdings will not comply with the Generic Listing Standards for equity securities set forth in BZX Rule 14.11(i)(4)(C)(i). The Commission believes that manipulation concerns relating to the Shares are sufficiently mitigated because the Equity Holdings would be acquired only by virtue of the Fund's other holdings and the Fund would not purchase the Equity Holdings, the Fund would dispose of the Equity Holdings as the Adviser determines is in the best interest of the Fund's shareholders, and the Equity Holdings would be limited to 10% of the Fund's assets.²⁹

In support of this proposal, the Exchange has also made the following representations:

²⁷ See Amendment No. 1, at 47-48.

²⁸ See supra note 26.

²⁹ See Amendment No. 1, at 48.

- (1) The Shares will be subject to BZX Rule 14.11(i), which sets forth the continued listing criteria applicable to Managed Fund Shares. Other than as described above, the Fund will continue to satisfy all of the Generic Listing Standards under BZX Rule 14.11(i)(4)(c) and all other continued listing requirements of BZX Rule 14.11(i).
- (2) The Exchange's 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.
- (3) The Exchange, FINRA, on behalf of the Exchange, or both will communicate, and may obtain information, regarding trading in the Shares and the underlying listed instruments, including listed derivatives and certain Equity Holdings, held by the Fund with the ISG, other markets or entities who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine. Trade price and other information relating to municipal securities is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system.
- (4) The Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, while the Fund will be permitted to borrow as permitted

under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A). The Fund will only use those derivatives described above and the Fund's use of derivative instruments will be collateralized.

- (5) All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset, and intraday indicative values, and the applicability of Exchange rules specified in this filing shall constitute continued listing requirements for the Fund.
- (6) The issuer 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, the Exchange will commence delisting procedures under Exchange Rule 14.12.
- (7) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.
- (8) The issuer of the Fund is required to comply with Rule 10A-3 under the Act³⁰ for the initial and continued listing of the Shares.

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

³⁰ See 17 CFR 240.10A-3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act³¹ and Section 11A(a)(1)(C)(iii) of the Act³² and the rules and regulations thereunder applicable to a national securities exchange.

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

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 to 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-016 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-2019-016. 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

³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78k-1(a)(1)(C)(iii).

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-016, and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE *FEDERAL REGISTER*].**

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. The Commission notes that Amendment No. 1 clarifies the proposed investments of the Fund, including any limitations on such investments. Amendment No. 1 also provides other clarifications and additional information to the proposed rule change.³³ The changes and additional information in Amendment No. 1 assist the Commission in finding that the proposal is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,³⁴ to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

³³ See supra note 4.

³⁴ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,³⁵ that the proposed rule change (SR-CboeBZX-2019-016), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Eduardo A. Aleman,

Deputy Secretary.

³⁵ 15 U.S.C. 78s(b)(2).

³⁶ 17 CFR 200.30-3(a)(12).

