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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-80664; File No. SR-BatsBZX-2017-07]

Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the VanEck Vectors AMT-Free National Municipal Index ETF of VanEck Vectors ETF Trust Under BZX Rule 14.11(c)(4)

May 11, 2017

I. Introduction

On January 27, 2017, 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 list and trade shares (“Shares”) of the VanEck Vectors AMT-Free National Municipal Index ETF (“Fund”) under BZX Rule 14.11(c)(4). The proposed rule change was published for comment in the Federal Register on February 14, 2017.³ On March 10, 2017, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.⁴ On March 30, 2017, pursuant to Section 19(b)(2) of the Act,⁵ the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 79989 (February 8, 2017), 82 FR 10615.

⁴ In Amendment No. 1, the Exchange: (1) clarified its description of the two benchmark indexes that the Index (as defined below) tracks; (2) clarified its description of the Fund’s investments; (3) made additional representations regarding the applicability of Exchange rules and other requirements; (4) clarified its description of the calculation of the net asset

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 disapprove the proposed rule change.⁶ The Commission has received no comment letters on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to list and trade Shares of the Fund under BZX Rule 14.11(c)(4), which governs the listing and trading of index fund shares based on fixed income securities indexes. The Shares will be offered by the VanEck Vectors ETF Trust ("Trust").⁸ Van Eck Associates Corporation will be the investment adviser ("Adviser") to the Fund. The Adviser will serve as the administrator for the Fund. The Bank of New York Mellon will serve as the

value of the Fund; (5) stated the cutoff time for orders to create Creation Units; (6) represented that FINRA, on behalf of the Exchange, may obtain certain information for surveillance; and (7) made technical changes. Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-batsbzx-2017-07/batsbzx201707-1667531-148997.pdf>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 80350, 82 FR 16647 (April 5, 2017). The Commission designated May 15, 2017 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ The Exchange states that the Trust is registered with the Commission as an open-end investment company. See Registration Statement on Form N-1A for the Trust, dated October 31, 2016 (File Nos. 333-123257 and 811-10325) ("Registration Statement"). The Exchange further states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). See Investment Company Act Release No. 28021 (October 24, 2007) (File No. 812-13426).

custodian and transfer agent for the Fund. Van Eck Securities Corporation will be the distributor of the Shares. Bloomberg Finance L.P. and its affiliates will be the index provider.

The Exchange has made the following representations and statements in describing the Fund and its investment strategy, including the Fund's portfolio holdings and investment restrictions.⁹

A. Exchange's Description of the Fund's Principal Investments

According to the Exchange, the Fund will seek to replicate as closely as possible, before fees and expenses, the price and yield performance of the Bloomberg Barclays AMT-Free National Municipal Index ("Index").¹⁰ The Index tracks the municipal bond market by tracking two total return, market-size-weighted benchmark indexes with target weights as follows:

- A 75% weight in the Muni Investment-Grade Rated/\$75 Million Deal Size Index in order to gain exposure to investment grade municipal bonds (i.e., rated Baa3/BBB- or higher). To be included in the Muni Investment-Grade Rated/\$75 Million Deal Size Index, a bond must be rated Baa3/BBB- or higher by at least two of the following rating agencies if all three agencies rate the bond: Moody's Investors Service ("Moody's"), Standard & Poor's Ratings Services ("S&P") and Fitch Ratings, Inc. ("Fitch"). If only two of the three agencies rate the bond, the lower rating is used to determine index eligibility. If only one of the three agencies rates the bond, the rating must be Baa3/BBB- or higher. Bonds in the Muni Investment-Grade Rated/\$75

⁹ The Commission notes that additional information regarding the Fund, the Index (as defined below), the Trust, and the Shares, including 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 No. 1 and the Registration Statement, as applicable. See supra notes 4 and 8, respectively.

¹⁰ The Exchange states that, unless otherwise noted, all statistics related to the Index presented in the proposal were accurate as of November 30, 2016.

Million Deal Size Index must have an outstanding par value of at least \$7 million and be issued as part of a transaction of at least \$75 million.

- A 25% weight in the Muni High Yield/\$20 Million Deal Size Index in order to gain exposure to non-investment grade municipal bonds (i.e., unrated or rated Ba1/BB+ or lower). To be included in the Muni High Yield/\$20 Million Deal Size Index, a bond must be unrated or rated Ba1/BB+ or lower by at least two of the following rating agencies if all three agencies rate the bond: Moody's, S&P, and Fitch. If only two of the three agencies rate the bond, the lower rating is used to determine index eligibility. If only one of the three agencies rates the bond, the rating must be Ba1/BB+ or lower. Bonds in the Muni High Yield/\$20 Million Deal Size Index must have an outstanding par value of at least \$3 million and be issued as part of a transaction of at least \$20 million.

All bonds included in the Index must have a fixed rate, a dated date (i.e., the date when interest begins to accrue) after December 31, 1990, and a nominal maturity of 1 to 30 years. Bonds subject to the alternative minimum tax, taxable municipal bonds, bonds with floating rates, derivatives and municipal bonds of issuers from the territories of the United States (e.g., Puerto Rico) are excluded from the Index. The composition of the Index is rebalanced monthly. Interest and principal payments earned by the component securities are held in the Index without a reinvestment return until month end when they are removed from the Index. Qualifying securities issued, but not necessarily settled, on or before the month end rebalancing date qualify for inclusion in the Index in the following month.

According to the Exchange, the Fund normally invests at least 80% of its total assets in securities that comprise the Fund's benchmark index. The Index is comprised of publicly traded

municipal bonds that cover the U.S. dollar-denominated investment grade and high yield tax-exempt bond market. The Fund's 80% investment policy is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders.¹¹ The Fund also has adopted a fundamental investment policy to invest at least 80% of its assets in municipal securities.¹² When issued transactions ("WIs") representing securities eligible for inclusion in the Index may be used by the Fund in seeking performance that corresponds to the Index and in such cases would count towards the Fund's 80% Investment Policy.

B. Exchange's Description of the Fund's Other Investments

While the Fund normally will invest at least 80% of its total assets in securities that compose the Index, as described above, the Fund may invest its remaining assets in the other financial instruments described below.

The Fund may invest its remaining assets in the following instruments: municipal bonds not included in the Index; money market instruments, including repurchase agreements or other

¹¹ The Exchange states that the Fund's policy to invest 80% of its total assets in securities that comprise the Fund's benchmark index ("80% Investment Policy") is non-fundamental and may be changed without shareholder approval upon 60 days' prior written notice to shareholders. The Exchange notes that, notwithstanding the foregoing, all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets (including, for example, the Fund's 80% Investment Policy), or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements (or any changes made with respect to the Fund's 80% Investment Policy), 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 is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

¹² The Fund's policy to invest 80% of its assets in municipal securities is a fundamental investment policy that cannot be changed without the approval of the holders of a majority of the Fund's outstanding voting securities.

funds which invest exclusively in money market instruments; convertible securities; structured notes; certain derivative instruments described below; and, to the extent permitted by the 1940 Act, affiliated and unaffiliated funds, such as open-end or closed-end management investment companies, including other exchange-traded funds (“ETFs”).¹³ WIs not included in the Index may also be used by the Fund in managing cash flows. The Fund may use exchange-traded futures contracts and exchange-traded options thereon, together with positions in cash and money market instruments, to simulate full investment in the Index. The Fund may use cleared or non-cleared index, interest rate or credit default swap agreements. The Fund may invest in exchange-traded warrants. The Fund may invest in participation notes.

C. Exchange’s Description of the Index

The Exchange is submitting this proposed rule change because the Index for the Fund does not meet all of the generic listing requirements of BZX Rule 14.11(c)(4) applicable to index fund shares based on fixed income securities indexes. The Exchange states that the Index meets all such requirements except for those set forth in BZX Rule 14.11(c)(4)(B)(i)(b).¹⁴ BZX Rule 14.11(c)(4)(B)(i)(b) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount

¹³ For purposes of this filing, ETFs include Index Fund Shares (as described in Rule 14.11(c)); Portfolio Depositary Receipts (as described in Rule 14.11(b)); and Managed Fund Shares (as described in Rule 14.11(i)). All ETFs will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of ETFs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged or inverse leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

¹⁴ The Exchange states that, except for BZX Rule 14.11(c)(4)(B)(i)(b), the Index currently satisfies and will continue to satisfy all of the generic listing standards under BZX Rule 14.11(c)(4). The Exchange also states that the continued listing standards under BZX Rule 14.11(c) applicable to index fund shares shall apply to the Shares.

outstanding of \$100 million or more. As of November 30, 2016, 25.04% of the weight of the Index components have a minimum original principal amount outstanding of \$100 million or more.

According to the Exchange, as of November 30, 2016, there were 50,615 issues in the Index, and 86.49% of the weight of the Index components was comprised of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding \$100 million or more for all maturities of the offering. In addition, the total dollar amount outstanding of issues in the Index was approximately \$1.5 trillion and the average dollar amount outstanding of issues in the Index was approximately \$30.4 million. Further, the most heavily weighted component represented 1.57% of the weight of the Index and the five most heavily weighted components represented 3.93% of the weight of the Index. Finally, 63.8% of the Index weight consisted of issues with a rating of AA/Aa2 or higher.

III. Proceedings to Determine Whether to Approve or Disapprove SR-BatsBZX-2017-07, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁵ to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change, as modified by Amendment No. 1.

¹⁵ 15 U.S.C. 78s(b)(2)(B).

Pursuant to Section 19(b)(2)(B) of the Act,¹⁶ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, 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," and "to protect investors and the public interest."¹⁷ As noted above, the Exchange is submitting this proposed rule change because the Index for the Fund does not meet the requirements set forth in BZX Rule 14.11(c)(4)(B)(i)(b). In the proposal, the Exchange described certain characteristics of the Index as of November 30, 2016,¹⁸ and stated its belief that the Index is sufficiently broad-based to deter potential manipulation and that the Index securities are sufficiently liquid to deter potential manipulation. However, the Commission notes that the Exchange did not provide, for the continued listing of the Shares, parameters around the extent to which the Index may change from those characteristics. The Commission seeks commenters' views on whether the Exchange's statements and representations support a determination that the listing and trading of the Shares would be consistent with Section 6(b)(5) of the Act, which, among other things, requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

¹⁶

Id.

¹⁷

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

¹⁸

See supra Section II.C.

IV. Procedure: Request for Written Comments

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

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,²⁰ in addition to any other comments they may wish to submit about the proposed rule change.

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

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

²⁰ See supra note 4.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BatsBZX-2017-07 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-BatsBZX-2017-07. 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-2017-07 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Eduardo A. Aleman,
Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(57).

