

wide circuit breaker mechanism under Rule 80B should continue on a pilot basis while the Commission considers whether to permanently approve Rule 80B.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change implicates any competitive issues because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission considers whether to permanently approve the market-wide circuit breaker mechanism under Rule 80B. Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot so that the market-wide circuit breaker mechanism may continue uninterrupted while the Commission considers whether to approve its operation on a permanent basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. Extending the pilot for an additional six months will allow the

uninterrupted operation of the existing pilot to halt trading across the U.S. markets while the Commission considers whether to approve the pilot on a permanent basis. The extension simply maintains the status quo. Therefore, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.¹³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether 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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-19 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-NYSE-2019-19. This file number should be included on the subject line if email 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. 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-NYSE-2019-19, and should be submitted on or before May 6, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-07376 Filed 4-12-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85557; File No. SR-CboeBZX-2019-001]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Under BZX Rule 14.11(c)(3) Shares of the Global X Russell 2000 Covered Call ETF of Global X Funds

April 9, 2019.

I. Introduction

On January 28, 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 (the "Act" or the "Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade under BZX Rule 14.11(c)(3) shares of the Global X Russell 2000 Covered Call ETF ("Fund") of Global X Funds. The proposed rule

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ *Id.*

¹² 17 CFR 240.19b-4(f)(g)(iii).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change was published for comment in the **Federal Register** on February 15, 2019.³ On March 14, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁴ On March 21, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.⁵ On April 5, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed

rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to list and trade shares ("Shares") of the Fund under BZX Rule 14.11(c)(3),⁷ which governs the listing and trading of index fund shares based on an index composed of U.S. Component Stocks.⁸ The Exchange notes that the Commission has previously approved a fund that employs a very similar strategy.⁹

The Shares are offered by Global X Funds, which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.¹⁰ The investment adviser and administrator to the Fund is Global X Management Company LLC (the "Adviser" or "Administrator").¹¹

⁷ The Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁸ Rule 14.11(c)(1)(D) provides that the term "U.S. Component Stock" shall mean an equity security that is registered under Sections 12(b) or 12(g) of the Act.

⁹ See Securities Exchange Act Release No. 68708 (January 23, 2013), 78 FR 6161 (January 29, 2013) (SR-NYSEArca-2012-131) (order granting approval of proposed rule change relating to listing and trading of shares of the Horizons S&P 500 Covered Call ETF).

¹⁰ The Trust is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1) ("1940 Act"). On December 20, 2018, the Trust filed with the Commission an amendment to its Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Funds (File Nos. 333-151713 and 811-22209) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. See Investment Company Act Release No. 29852 (October 28, 2011) (File No. 812-13830).

¹¹ The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers and has

SEI Investments Distribution Co. (the "Distributor") is the principal underwriter and distributor of the Shares. Brown Brothers Harriman & Co. (the "Custodian" or "Transfer Agent") will serve as custodian and transfer agent for the Fund.

The Exchange submits this proposal because the Underlying Index, as defined below, includes options on the Russell 2000 Index. Rule 14.11(c)(3)(A)(i)(e) provides that all securities in the applicable index or portfolio shall be U.S. Component Stocks listed on a national securities exchange and shall be NMS Stocks as defined in Rule 600 under Regulation NMS of the Act. Options are excluded from the definition of U.S. Component Stocks. As such, because the Underlying Index, as defined below, includes options, it does not meet the generic listing standards applicable to Index Fund Shares under Rules 14.11(c)(3)(A)(i)(a)-(e). The Fund and the Underlying Index do, however, meet all other requirements of the listing standards for Index Fund Shares in Rule 14.11(c)(3). The Exchange also notes that each component stock of the Russell 2000 Index is a U.S. Component Stock that is listed on a national securities exchange and is an NMS Stock and that such component stocks of the Russell 2000 Index satisfy the requirements of Rule 14.11(c)(3)(A)(i)(a)-(e).

As described below, the Fund will seek investment results that, before fees and expenses, generally correspond to the performance of the Cboe Russell 2000 BuyWrite Index (the "Underlying Index") provided by FTSE Russell (the "Index Provider").¹² The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Russell 2000 Index.¹³ (the "Reference

implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding said portfolio.

¹² The Underlying Index is provided by the Index Provider, which is unaffiliated with the Fund or the Adviser. The Index Provider maintains, calculates and publishes information regarding the Underlying Index. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index.

¹³ The Exchange notes that the Russell 2000 Index has been previously approved by the Commission

Continued

³ See Securities Exchange Act Release No. 85099 (February 11, 2019), 84 FR 4584.

⁴ Amendment No. 1 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2019-001/sr-cboebzx2019001-5145199-183369.pdf>.

⁵ See Securities Exchange Act Release No. 85388, 84 FR 11597 (March 27, 2019). The Commission designated May 16, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ In Amendment No. 2, the Exchange: (1) Clarified that the Fund and the Underlying Index (as defined below) meet all requirements of the listing standards applicable to index fund shares in BZX Rule 14.11(c)(3), except for Rule 14.11(c)(3)(A)(i)(e); (2) modified the name of the Underlying Index (as defined below); (3) specified that the Fund will invest at least 80% of its total assets in equity components of the Reference Index (as defined below), U.S. exchange-listed ETFs designed to track the Reference Index, U.S. listed options on equities that are components of the Reference Index, U.S. listed options on ETFs designed to track the Reference Index, as well as certain instruments that are either included in the Underlying Index or have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate, including only the following: U.S. listed equity index futures, U.S. listed equity index options, and U.S. listed options on U.S. listed equity index futures; (4) clarified that the Fund may hold cash and Cash Equivalents (as defined below); (5) clarified that the Fund's investments will not be used to enhance leverage, although certain derivatives and other investments may result in leverage; (6) added representations regarding the Fund's risk disclosure in its offering documents, including leveraging risk; (7) clarified the types of instruments in which the Fund may invest up to 20% of its net assets; (8) added a representation that all of the Fund's holdings in equities, ETFs, futures, and options will be listed on members of the Intermarket Surveillance Group or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement; (9) added a representation that the Fund's use of derivatives instruments will be collateralized; and (10) made technical and conforming changes. Amendment No. 2 to the proposed rule change is available at: <https://www.sec.gov/comments/sr-cboebzx-2019-001/sr-cboebzx2019001-5321696-183907.pdf>.

Index”), and “writes” (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until expiration. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell.¹⁴

The Exchange is submitting this proposed rule change because the Underlying Index for the Fund does not meet all of the “generic” listing requirements of Rule 14.11(c)(3)(A)(i) applicable to the listing of Index Fund Shares based upon an index of U.S. Component Stocks. Specifically, Rule 14.11(c)(3)(A)(i) sets forth the requirements to be met by components of an index or portfolio of U.S. Component Stocks. As further described below, the Underlying Index consists of the constituent securities of the Russell 2000 Index and options on the Russell 2000 Index. The Underlying Index meets all the requirements of Rule 14.11(c)(3)(A)(i) except that the Underlying Index includes call options, which are not NMS Stocks as defined in Rule 600 of Regulation NMS. As described below, the Underlying Index is comprised solely of Russell 2000 companies and includes an exposure to call options on the Reference Index. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Exchange, Inc. (“Cboe Options”). Notwithstanding that the Underlying Index does not meet all of the generic listing requirements of Rule 14.11(c)(3)(A)(i), the Exchange believes that the Underlying Index is sufficiently broad-based enough to deter potential manipulation in that the Reference Index stocks are among the most actively traded, highly capitalized stocks traded in the U.S.

The Underlying Index

According to the Registration Statement, the Global X Russell 2000

under Section 19(b)(2) of the Act in connection with the listing and trading of FLEX Options and Quarterly Index Options, as well as other securities. See, e.g., Securities Exchange Act Release Nos. 32694 (July 29, 1993), 58 FR 41814 (July 5, 1993) (approving the listing and trading of FLEX Options based on the Russell 2000 Index); 32693 (July 29, 1993), 58 FR 41817 (August 5, 1993) (approving the listing and trading of Quarterly Index Option based on the Russell 2000 Index).

¹⁴ The Underlying Index methodology is available at <http://www.cboe.com/products/strategy-benchmark-indexes/buywrite-indexes/cboe-russell-2000-buywrite-index-bxr>. The Index Provider may amend the methodology from time to time. In such case, the methodology would be updated accordingly on the website.

Covered Call ETF will seek investment results that, before fees and expenses, generally correspond to the performance of the Fund’s Underlying Index, which is the Cboe Russell 2000 BuyWrite Index. The Underlying Index measures the performance of a theoretical portfolio that holds a portfolio of the stocks included in the Reference Index, and “writes” (or sells) a succession of one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the applicable expiration date. The Reference Index is an equity benchmark which measures the performance of the small-capitalization sector of the U.S. equity market, as defined by FTSE Russell. The Underlying Index is comprised of all the equity securities in the Reference Index and a succession of short (written) one-month at-the-money covered call options on the Reference Index. The written covered call options on the Reference Index are held until the expiration date.

The Fund

According to the Registration Statement, the Fund will invest at least 80% of its total assets in securities that comprise its Underlying Index or in investments that have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate (the “80% Instruments”).¹⁵ The Fund may also hold cash and Cash Equivalents.¹⁶

¹⁵ The term 80% Instruments includes only the following: Equity components of the Reference Index, U.S. exchange-listed ETFs designed to track the Reference Index, U.S. listed options on equities that are components of the Reference Index, U.S. listed options on ETFs designed to track the Reference Index, as well as certain instruments that are either included in the Underlying Index or have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate, including only the following: U.S. listed equity index futures, U.S. listed equity index options, U.S. listed equity index futures [sic], U.S. listed equity index options [sic], and U.S. listed options on U.S. listed equity index futures.

¹⁶ 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: (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

In seeking to track the Underlying Index, the Fund follows a “buy-write” (also called a covered call) investment strategy on the Reference Index in which the Fund purchases the component securities of the Reference Index or purchases other investments (including other ETFs)¹⁷ that have economic characteristics that are substantially identical to the economic characteristics of such component securities, and also writes (or sells) call options that correspond to the Reference Index.

According to the Registration Statement, the Fund will be an index fund that employs a “passive management” investment strategy in seeking to achieve its objective. According to the Registration Statement, the Adviser’s strategy will consist of holding a portfolio indexed to the Reference Index and writing (selling) covered call options on the Reference Index.¹⁸ The Underlying Index provides a benchmark measure of the total return of this hypothetical portfolio.

According to the Registration Statement, the Fund will generally use a representative sampling methodology, meaning it will invest in a representative sample of securities that collectively has an investment profile similar to the Underlying Index in terms of key risk factors, performance attributes and other characteristics.

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

unsecured promissory notes; and (vii) money market funds.

¹⁷ For purposes of this filing, ETFs include index fund shares (as described in BZX Rule 14.11(c)); Portfolio Depositary Receipts (as described in BZX Rule 14.11(b)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs all 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 (e.g., 2X, –2X, 3X or –3X) ETFs.

¹⁸ A covered call strategy is generally considered to be an investment strategy in which an investor buys a security, and sells a call option that corresponds to the security. In return for a premium, the Fund will give the purchaser of the option written by the Fund either the right to buy the security from the Fund at an exercise price or the right to receive a cash payment equal to the difference between the value of the security and the exercise (or “strike”) price, if the value is above the exercise price on or before the expiration date of the option. In addition, the covered call options hedge against a decline in the price of the securities on which they are written to the extent of the premium the Fund receives. A covered call strategy is generally used in a neutral-to-bullish market environment, where a slow and steady rise in market prices is anticipated.

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 those derivatives described above. The Fund's use of derivative instruments will be collateralized.

According to the Registration Statement, the Fund will concentrate its investments (*i.e.*, hold 25% or more of its total assets) in a particular industry or group of industries to approximately the same extent that the Underlying Index is so concentrated. The Fund will be diversified under the 1940 Act.

Investment Guidelines

According to the Registration Statement, the Fund will write (sell) call options on the Reference Index to the same extent as such short call options are included in its Underlying Index.

The Trust, on behalf of the Fund, has filed a notice of eligibility for exclusion from the definition of the term "commodity pool operator" in accordance with Rule 4.5 so that the Fund is not subject to registration or regulation as a commodity pool operator under the Commodity Exchange Act ("CEA").

Other Investments

The Fund may also hold up to 20% of its net assets in shares of non-exchange traded registered open-end investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act ("Mutual Funds"),²⁰ U.S. listed options on equities that are not components of the

Reference Index, U.S. listed options on ETFs that are not designed to track the Reference Index, and U.S. exchange-listed listed equities that are not components of the Reference Index, including ETFs that are not designed to track the Reference Index, which the Adviser believes will help the Fund track the Underlying Index, as well as in certain instruments that would be included in the definition of the 80% Instruments except that such instruments are not included in the Underlying Index or do not have economic characteristics that are substantially identical to the economic characteristics of such component securities, either individually or in the aggregate, including only the following: U.S. listed equity index futures, U.S. listed equity index options, and U.S. listed options on U.S. listed equity index futures.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).²¹ The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in the light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities and other illiquid assets.

The Fund will seek to qualify for treatment as a regulated investment company ("RIC") under the Code.²²

Availability of Information

The Fund's website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The website will

include additional quantitative information updated on a daily basis, including, for the Fund: (1) The prior business day's reported NAV and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio. The website and information will be publicly available at no charge. The value, components, and percentage weightings of the Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing the Underlying Index are available on the Exchange's website and in the Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the "Intraday Indicative Value," (the "IIV") that reflects an estimated intraday value of the Fund's portfolio, will be disseminated. Moreover, the IIV will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every

¹⁹ 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 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. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance. See 15 U.S.C. 80a-18; Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979); Dreyfus Strategic Investing, Commission No-Action Letter (June 22, 1987); Merrill Lynch Asset Management, L.P., Commission No-Action Letter (July 2, 1996).

²⁰ The Fund will not invest in leveraged (*e.g.*, 2x, -2x, 3x, or -3x) Mutual Funds.

²¹ The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 8901 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the exchange traded fund ("ETF"). See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

²² 26 U.S.C. 851.

15 seconds during the Exchange's Regular Trading Hours.²³

The dissemination of the IIV, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares will be available via the CTA high speed line and, for the securities held by the Fund, will be available from the exchange on which they are listed. Quotation and last sale information for options contracts held by the Fund will be available via the Options Price Reporting Authority. The intra-day, closing, and settlement prices of the portfolio instruments, including equities, ETFs, futures, and options, will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information for Cash Equivalents will be available from major market data vendors. Mutual Funds are typically priced once each business day and their prices will be available through the applicable fund's website or from major market data vendors.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares the Fund inadvisable. If the IIV and index value are not being disseminated for the Fund as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Exchange will halt trading. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or

the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 8:00 a.m. until 8:00 p.m. Eastern Time and has the appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares. The 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, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the Intermarket

Surveillance Group ("ISG")²⁴ and may obtain trading information regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3²⁵ under the Exchange Act, as provided by generic listing standards under Rule 14.11(c)(4) and the continued listing standards under Rule 14.11(c). A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange represents that, except for the exceptions to BZX Rule 14.11(c) described above, the Fund and Shares will satisfy all applicable requirements for Index Fund Shares under Rule 14.11(c), including the requirements related to the net asset value ("NAV") per Share being calculated daily and made available to all market participants at the same time, intraday indicative value, suspension of trading or removal, trading halts, disclosure, and firewalls.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the

²³ Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the Consolidated Tape Association ("CTA") or other data feeds.

²⁴ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all of the components of the portfolio for the Fund may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

²⁵ 17 CFR 240.10A-3.

Shares to customers; (3) how information regarding the Intraday Indicative Value and the portfolio holdings is disseminated; (4) the risks involved in trading the Shares during the Pre-Opening²⁶ and After Hours Trading Sessions²⁷ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁸ in general and Section 6(b)(5) of the Act²⁹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Index Fund Shares

based on an index composed of U.S. Component Stocks in Rule 14.11(c)(3). The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts from such markets and other entities.³⁰ In addition, the Exchange may obtain information regarding trading in the Shares, underlying equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Options, a U.S. national options exchange and member of ISG. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Fund reported to TRACE.

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. The Fund's use of derivative instruments will be collateralized.

The Adviser is affiliated with broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund. In the event (a) the Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to such broker-dealer regarding access to information concerning the portfolio holdings of the Fund, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolios. The Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Moreover, the IIV and the Underlying Index value will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours. If the IIV or the Underlying Index value of a Fund is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the applicable IIV or Underlying Index value occurs. If the interruption to the dissemination of the applicable IIV or Underlying Index value persists past the trading day in which it occurred, the Exchange will halt trading. In addition, if the Exchange becomes aware that the NAV of a Fund is not being disseminated to all market participants at the same time, it will halt trading in the relevant Shares on the Exchange until such time as the NAV is available to all market participants. On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website the securities and other financial instruments in the Fund's

²⁶ The Pre-Opening Session is from 8:00 a.m. to 9:30 a.m. Eastern Time.

²⁷ The After Hours Trading Session is from 4:00 p.m. to 5:00 p.m. Eastern Time.

²⁸ 15 U.S.C. 78f.

²⁹ 15 U.S.C. 78f(b)(5).

³⁰ The Exchange notes that all of the Funds [sic] holdings in equities, ETFs, futures, and options will be listed on members of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.

portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line. The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange will halt trading in the Shares under the conditions specified in Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, the equity securities (including ETFs), futures, and options in which the Fund will invest will trade in markets that are ISG members. Additional information regarding the Underlying and Reference Indices' components and their percentage weights will be available from the Index Provider and major market data vendors. In addition, quotation and last sale information for the components of the Underlying and Reference Indices will be available from the exchanges on which they trade. The intra-day, closing and settlement prices of the portfolio instruments will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, the Underlying Index's value, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of Index Fund Shares that will enhance competition among market participants, to the

benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares, the underlying equities (including ETFs), futures, and options contracts and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the IIV, relevant Underlying Index value, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of an additional series of Index Fund Shares on the Exchange that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.³¹ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,³² which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the

Act,³³ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

Quotation and last-sale information for the Shares will be available via the CTA high speed line and, for the securities held by the Fund, will be available from the exchange on which they are listed.³⁴ Quotation and last sale information for options contracts held by the Fund will be available via the Options Price Reporting Authority.³⁵ The intra-day, closing, and settlement prices of the portfolio instruments, including equities, ETFs, futures, and options, will also be readily available from the exchanges trading such instruments, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters.³⁶ Price information for Cash Equivalents will be available from major market data vendors.³⁷ Mutual Fund prices will be available through the applicable fund's website or from major market data vendors.³⁸

On each business day, before commencement of trading in Shares during Regular Trading Hours on the Exchange, the Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day.³⁹ The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in the Fund's portfolio.⁴⁰ The website and

³¹ 15 U.S.C. 78k-1(a)(1)(C)(iii).

³⁴ See Amendment No. 2, *supra* note 6, at 14.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *id.* at 14-15.

³⁸ See *id.* at 15.

³⁹ See *id.* at 13.

⁴⁰ See Amendment No. 2, *supra* note 6, at 13.

³¹ 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).

³² 15 U.S.C. 78f(b)(5).

information will be publicly available at no charge.⁴¹

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last sale information will be available via the CTA high-speed line.⁴² Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites.⁴³ The website for the Fund will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.⁴⁴ The value, components, and percentage weightings of the Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors.⁴⁵ Additional information regarding the Underlying and Reference Indices' components and their percentage weights will be available from the Index Provider and major market data vendors.⁴⁶ Moreover, the Underlying Index value and the IIV, as defined in BZX Rule 14.11(c)(6)(A), will be widely disseminated by one or more major market data vendors at least every 15 seconds during Regular Trading Hours.⁴⁷

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV will be made available to all market participants at the same time.⁴⁸ Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.⁴⁹

Trading in the Shares also will be subject to Rule 14.11(c)(1)(B)(iv), which sets forth circumstances under which Shares of a Fund may be halted.⁵⁰ The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.⁵¹ In addition, the Exchange states that the Index Provider is not a broker-dealer and has implemented and will maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Underlying Index.⁵² The Exchange also represents that the Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the portfolio holdings of the Fund.⁵³

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.⁵⁴ The Exchange further represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.⁵⁵ Moreover, prior to the commencement of trading, the Exchange will inform its Members in an Information Circular of the special characteristics and risks associated with trading the Shares.⁵⁶

The Commission notes that the Fund and the Shares must comply with the initial and continued listing criteria in Rule 14.11(c) for the Shares to be listed and traded on the Exchange. Except for the Underlying Index's exposure to call options, the Fund and Shares will satisfy all applicable requirements for Index Fund Shares under Rule 14.11(c), including the requirements related to the NAV per Share being calculated daily and made available to all market participants at the same time, intraday indicative value, suspension of trading or removal, trading halts, disclosure, and firewalls.⁵⁷ Additionally, all of the Fund's holdings in equities, ETFs,

futures and options will be listed on members of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.⁵⁸

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.⁵⁹ In support of this proposal, the Exchange has also made the following representations:

(1) The Fund and the Shares will satisfy all of the generic listing standards under BZX Rule 14.11(c) except BZX Rule 14.11(c)(3)(A)(i)(e).⁶⁰

(2) The Exchange has the appropriate rules to facilitate transactions in the Shares during all trading sessions.⁶¹

(3) The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares, underlying equities, futures, and options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares, underlying equities (including ETFs), futures, and options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equities (including ETFs), futures, and the options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange is also able to access, as needed, trade information for certain fixed income securities held by the Fund reported to FINRA's TRACE.⁶²

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the portfolio holdings is disseminated; (d) the risks involved in trading the Shares during

⁴¹ See *id.*

⁴² See *id.* at 22.

⁴³ See *id.* at 13.

⁴⁴ See *id.* at 22.

⁴⁵ See *id.* at 13–14.

⁴⁶ See Amendment No. 2, *supra* note 6, at 23.

⁴⁷ See *id.* at 22.

⁴⁸ See *id.* at 21.

⁴⁹ See *id.* at 23. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of the Fund; or (2) whether

other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

⁵⁰ See *id.* at 15.

⁵¹ See *id.* at 17.

⁵² See Amendment No. 2, *supra* note 6, at 6, n.8.

⁵³ See *id.* at 4, n.7.

⁵⁴ See *id.* at 19–20.

⁵⁵ See *id.* at 20.

⁵⁶ See *id.* at 18.

⁵⁷ See *id.* at 17–18.

⁵⁸ See Amendment No. 2, *supra* note 6, at 20, n.26.

⁵⁹ See *id.* at 16.

⁶⁰ See *id.* at 5, 18.

⁶¹ See *id.* at 16.

⁶² See *id.* at 17.

the Pre-Opening and After Hours Trading Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.⁶³

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.⁶⁴

(6) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.⁶⁵

(7) All of the Fund's holdings in equities, ETFs, futures, and options will be listed on members of ISG or on markets with which the Exchange has in place a comprehensive surveillance sharing agreement.⁶⁶

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment).⁶⁷

(9) 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). 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).⁶⁸

(10) All securities in the Reference Index are listed and traded on a U.S. national securities exchange. The options on the Reference Index are traded on Cboe Options.⁶⁹

(11) The Fund's use of derivative instruments will be collateralized.⁷⁰

(12) The Fund will not invest in leveraged (*e.g.*, 2x, -2x, 3x, or -3x) Mutual Funds.⁷¹

(13) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Index Fund Shares,⁷² as well as cross-market surveillances administered by FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities

laws applicable to trading on the Exchange.⁷³

(14) The issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.⁷⁴

(15) If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.⁷⁵

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment No. 2.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 2 thereto, is consistent with Section 6(b)(5) of the Act⁷⁶ and the rules and regulations thereunder applicable to a national securities exchange.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 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 email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-001 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-2019-001. This file number should be included on the subject line if email 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. 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-2019-001 and should be submitted on or before May 6, 2019.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. Amendment No. 2 supplements the proposal by, among other things: (1) Providing additional information regarding the Fund's permissible holdings; and (2) making additional representations regarding the Fund's use of leveraging. The changes and additional information in Amendment No. 2 assists the Commission in evaluating the Exchange's proposal and in determining that the listing and trading of the Shares is consistent with the Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,⁷⁷ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷⁸ that the proposed rule change (SR-CboeBZX-2019-001), as modified by Amendment No. 2 thereto, be, and it hereby is, approved on an accelerated basis.

⁷⁷ 15 U.S.C. 78s(b)(2).

⁷⁸ *Id.*

⁶³ See *id.* at 18.

⁶⁴ 17 CFR 240.10A-3; see Amendment No. 2, *supra* note 6, at 17.

⁶⁵ See *id.* at 17.

⁶⁶ See *id.* at 20, n.26.

⁶⁷ See *id.* at 12.

⁶⁸ See *id.* at 10.

⁶⁹ See *id.* at 7.

⁷⁰ See Amendment No. 2, *supra* note 6, at 10.

⁷¹ See *id.* at 11, n.16.

⁷² See *id.* at 16.

⁷³ See *id.* at 20.

⁷⁴ See *id.* at 16.

⁷⁵ See *id.*

⁷⁶ 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁹

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019-07377 Filed 4-12-19; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85572; File No. SR-NYSENAT-2019-08]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Pilot Related to Rule 7.12, Trading Halts Due to Extraordinary Market Volatility

April 9, 2019.

Pursuant to Section 19(b)(1) ¹ of the Securities Exchange Act of 1934 (the “Act”) ² and Rule 19b-4 thereunder, ³ notice is hereby given that on April 5, 2019, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to Rule 7.12, Trading Halts Due to Extraordinary Market Volatility, to the close of business on October 18, 2019. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Rule 7.12 provides a methodology for determining when to halt trading in all stocks due to extraordinary market volatility, *i.e.*, market-wide circuit breakers. The market-wide circuit breaker mechanism under Rule 7.12 was approved by the Commission to operate on a pilot basis, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the “LULD Plan”),⁴ including any extensions to the pilot period for the LULD Plan.⁵ The Commission published an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.⁶

The Exchange proposes to amend Rule 7.12 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019. The Exchange does not propose any additional changes to Rule 7.12.

Market-wide circuit breakers under Rule 7.12 provide an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. All U.S. equity exchanges have rules relating to market-wide circuit breakers, which are designed to slow the effects of extreme price movement through coordinated trading halts across securities markets when severe price declines reach levels that may exhaust market liquidity. Market-wide circuit breakers provide for trading halts in all equities and options markets during a severe market decline as measured by a single-day decline in the S&P 500 Index.

Pursuant to Rule 7.12, a market-wide trading halt will be triggered if the S&P 500 Index declines in price by specified percentages from the prior day's closing

price of that index. Currently, the triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2) and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 circuit breaker after 9:30 a.m. ET and before 3:25 p.m. ET would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. ET would not halt market-wide trading. A market decline that triggers a Level 3 circuit breaker, at any time during the trading day, would halt market-wide trading for the remainder of the trading day.

The Exchange intends to file a separate proposed rule change with the Commission to operate Rule 7.12 on a permanent, rather than pilot, basis. Extending the effectiveness of Rule 7.12 to the close of business on October 18, 2019 should provide the Commission adequate time to consider whether to approve the Exchange's separate proposal to operate the market-wide circuit breaker mechanism under Rule 7.12 on a permanent basis.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of Sections 6(b) ⁷ and 6(b)(5) of the Act,⁸ in particular, because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system. The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Extending the market-wide circuit breaker pilot under Rule 7.12 an additional six months would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission considers whether to approve the pilot on a permanent basis. The proposed rule change would thus promote fair and orderly markets and the protection of investors and the public interest. Based on the foregoing, the Exchange believes the benefits to market participants from the market-wide circuit breaker mechanism under Rule 7.12 should continue on a pilot basis while the Commission considers whether to permanently approve Rule 7.12.

⁴ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

⁵ See Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR-NSX-2011-11) (Approval Order); and 68779 (January 31, 2013), 78 FR 8638 (February 6, 2013) (SR-NSX-2013-04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Delaying the Operative Date of Rule 7.12 to April 8, 2013).

⁶ See Securities Exchange Act Release Nos. 84843 (December 18, 2018), 83 FR 66464 (December 26, 2018) (Amendment No. 18 Proposing Release).

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁷⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.