

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NASDAQ-2018-080 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-NASDAQ-2018-080. 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-NASDAQ-2018-080, and should be submitted on or before November 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²²

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-24068 Filed 11-2-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84507; File No. SR-CboeBZX-2018-079]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish How the BZX Official Closing Price Would Be Determined for BZX-Listed Securities

October 30, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 18, 2018, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

The Exchange proposes a rule change to establish how the BZX Official Closing Price would be determined for BZX-listed securities.

The text of the proposed rule change is also available on the Exchange's

website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, 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 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BZX Rule 11.23, Auctions, to amend how the BZX Official Closing Price⁴ would be determined for any BZX-listed security that is not a corporate security (a "Derivative Securities Product")⁵ if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot (collectively, an "Illiquid Auction"). Rule 11.23(c)(2)(B) currently provides how the Exchange determines the price of the Closing Auction and the BZX Official Closing Price. This proposed functionality is very similar to functionality that has already been approved by the Commission and is operational on NYSE Arca, Inc. ("Arca") (the "Arca Rule")⁶ and the Exchange believes that it raises no new

⁴ As defined in Rule 11.23(a)(3), the term "BZX Official Closing Price" shall mean the price disseminated to the consolidated tape as the market center closing trade.

⁵ With respect to equities traded on the Exchange, the term "new derivative securities product" means a security that meets the definition of "new derivative securities product" in Rule 19b-4(e) under the Securities Exchange Act of 1934. See BZX Rule 14.11(j). For purposes of Rule 19b-4(e), a "new derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. 17 CFR 240.19b-4(e).

⁶ See Securities Exchange Act Release No. 82907 (March 20, 2018), 83 FR 12980 (March 26, 2018) (SR-NYSEArca-2018-08) (order approving proposed changes to Arca Rule 1.1(II) related to determining an Official Closing Price).

¹²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On October 29, 2018, the Exchange filed Amendment No. 1 to the proposed rule change to specify the date upon which the Exchange's President (or designee) approved the proposed rule change, pursuant to delegated authority.

substantive issues for the Commission to review.

Current Rule 11.23(c)(2)(B) outlines the process for determining the price level at which the Closing Auction will occur⁷ and provides that the Closing Auction price will be the BZX Official Closing Price or, in the event that there is no Closing Auction for an issue, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade.⁸

The Exchange proposes to amend Rule 11.23(c)(2)(B) in order to change how the BZX Official Closing Price for an Exchange-listed security that is a Derivative Securities Product would be determined in the event of an Illiquid Auction. The proposed rule change is intended to make the BZX Official Closing Price more reflective of the value of such a Derivative Securities Product. Specifically, if a security is thinly traded or generally illiquid, it's currently possible that the BZX Official Closing Price for such Derivatives Securities Product will be based on a Final Last Sale Eligible Trade that may be hours, days, or even months old and therefore not necessarily reflect the true and current value of the security.

The Exchange believes that an execution that qualifies as a Final Last Sale Eligible Trade that occurs in the last five minutes of trading during Regular Trading Hours⁹ is sufficiently recent as to be reflective of the current market value of a Derivative Securities Product and, in the event of an Illiquid Auction, should be used as the BZX Official Closing Price. Where no such execution occurs, however, the Exchange believes that a time-weighted value based on the midpoint of the NBBO¹⁰ leading into the close is likely to be more indicative of the true and current value of the security than a Final Last Sale Eligible Trade that occurred more than five minutes prior to the close. As such, in the event that

there is an Illiquid Auction in a BZX-listed Derivative Securities Product, the Exchange proposes that the BZX Official Closing Price would be the time-weighted average price of the midpoint of the NBBO over the last five minutes of trading before the end of Regular Trading Hours (the "TWAP"). Based on the foregoing, the Exchange notes that it is proposing to use only the Final Last Sale Eligible Trade or the TWAP and not any weighting or combination of the two.

In order to implement these proposed changes, the Exchange is proposing to amend Rule 11.23(c)(2)(B) to make clear that for a BZX-listed corporate security, the Closing Auction price will be the BZX Official Closing Price, which is consistent with current functionality. The Exchange is further proposing to amend Rule 11.23(c)(2)(B) in order to add a three part test for determining the BZX Official Closing Price for Derivative Securities Products, as follows.

Proposed new Rule 11.23(c)(2)(B)(i) would provide that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price.

Proposed new Rule 11.23(c)(2)(B)(ii) would provide that in the event that the BZX Official Closing Price for an issue that is a Derivative Securities Product cannot be determined under paragraph (B)(i) of this Rule, the BZX Official Closing Price for such security will depend on when the last Final Last Sale Eligible Trade occurs. If a trade that would qualify as a Final Last Sale Eligible Trade occurred: (a) Within the final five minutes before the end of Regular Trading Hours, the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price of the NBBO midpoint measured over the last five minutes before the end Regular Trading Hours will be the BZX Official Closing Price.

Proposed new Rule 11.23(c)(2)(B)(iii) would provide that if the BZX Official Closing Price cannot be determined under proposed paragraphs (B)(i) or (B)(ii) of this Rule, the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

As noted above, the Exchange believes that the proposed functionality is very similar to the Arca Rule and does not raise any substantive issues not already considered by the Commission. The only substantive difference between the proposal and the Arca Rule relates to the Exchange proposing only to use one of the TWAP or the Final Last Sale Eligible Trade for the BZX Official Closing Price and to exclude, contrary to

the Arca Rule, any scenarios that would result in a blended price by changing the weight of the TWAP and the Final Last Sale Eligible Trade depending on how many minutes prior to the end of the trading day such Final Last Sale Eligible Trade occurs.

There are also two differences that the Exchange believes are non-substantive. First, the Exchange's proposed functionality for determining the BZX Official Closing Price applies to all securities listed on the Exchange that are not corporate securities, while the Arca Rule applies to all "derivative securities products."¹¹ Substantively, however, there is no practical difference between these definitions because the Exchange only offers listing of corporate securities (which it has excluded from the proposed new functionality) and products that would fall under the definition of derivative securities products. Second, the Arca Rule references the "consolidated last-sale eligible trade" in several instances where the Exchange proposed rule references the Final Last Sale Eligible Trade. The only difference between the definition of the consolidated last-sale eligible trade and the Final Last Sale Eligible Trade for purposes of this application is that the value of the Final Last Sale Eligible Trade will default to any execution on the Exchange that occurs within the last one second prior to the Closing Auction. For purposes of this proposal, the definitions are otherwise identical. The Exchange does not believe that this is a substantive difference because it is unlikely that securities for which this functionality is intended to improve a BZX Official Closing Price because of a lack of trading activity will have trading activity in the final second prior to the Closing Auction.

Implementation

The Exchange will implement the proposed rule change for determining the BZX Official Closing Price as soon as is practicable after the approval date of this proposed rule change and will announce the implementation date via Trade Desk Notice.

¹¹ The term "Derivative Securities Product" as used in Arca's rules means a security that meets the definition of "derivative securities product" in Rule 19b-4(e) under the Securities Exchange Act of 1934. See Arca Rule 1.1(k). For purposes of Rule 19b-4(e), a "derivative securities product" means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest, in, an underlying instrument. 17 CFR 240.19b-4(e).

⁷ The Exchange notes that it is not proposing to make changes to the process for determining the price level at which the Closing Auction will occur.

⁸ As defined in Rule 11.23(a)(9), the term "Final Last Sale Eligible Trade" shall mean the last trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used.

⁹ As defined in Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

¹⁰ As defined in Rule 1.5(o), the term "NBBO" shall mean the national best bid or offer.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a method of determining the BZX Official Closing Price in an Exchange-listed security that is a Derivative Securities Product if there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day. More specifically, the Exchange believes the proposed methodology for determining the BZX Official Closing Price would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more up-to-date indication of the value of such a security if there have not been any Final Last Sale Eligible Trades leading in to the close of trading. The Exchange believes the proposed BZX Official Closing Price calculation would also provide a closing price that more accurately reflects the most recent and reliable market information possible.

The Exchange further believes that the proposed TWAP calculation would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide for a more robust mechanism to determine the value of an affected security for purposes of determining a BZX Official Closing Price. By using either the price of a Final Last Sale Eligible Trade that occurs within five minutes of the close or a time-weighted calculation based on the midpoint of the NBBO over the last five minutes of trading leading into the close, the Exchange believes that the proposed calculation would result in a BZX Official Closing Price that is more reflective of the true and current value of such security on that trading day than

would otherwise occur under the current Closing Auction mechanism.

The Exchange also believes that the proposed methodology for determining a BZX Official Closing Price would be appropriate for Derivative Securities Products because if such securities are thinly traded, the price of the Final Last Sale Eligible Trade that occurred earlier in a trading day or even from a prior trading day may no longer be reflective of the value of such product, which should be priced relative to the value of the components of such security. In such case, either a more recent execution (in the last five minutes of Regular Trading Hours) or recent quoting activity will likely be more reflective of the value of the security. As such, the Exchange is proposing to use the TWAP in order to measure such quoting activity in order to avoid overly weighting a potentially stale quote that may occur leading into the close, which the Exchange believes would provide a greater indication of the value of such securities.

Finally, the Exchange believes that the proposed functionality does not raise any substantive issues not already considered by the Commission in approving the Arca Rule.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

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 purposes of the Act. The proposed rule change is designed to provide for how the Exchange would determine the BZX Official Closing Price for Exchange-listed securities that are Derivative Securities Products if there is no Closing Auction or if a Closing Auction trade is less than a round lot on a trading day, which will help it better compete as a listing venue.

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.

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Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may

designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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-CboeBZX-2018-079 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-2018-079. 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

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

to make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-079, and should be submitted on or before November 26, 2018.

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

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-24067 Filed 11-2-18; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33285; 812-14945]

Cushing Asset Management, LP and Cushing ETF Trust

October 30, 2018.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Cushing ETF Trust (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Cushing Asset Management, LP (the “Initial Adviser”), a Texas limited partnership registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on August 31, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on November 26, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Applicants: Cushing Asset Management, LP and Cushing ETF Trust, 8117 Preston Road, Suite 440, Dallas, TX 75225.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, at (202) 551-6883, or Aaron Gilbride, Branch Chief, at (202) 551-6906 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. The Initial Adviser is the investment adviser to the Cushing Energy & MLP ETF, Cushing Utility & MLP ETF, Cushing Transportation & MLP ETF and Cushing Energy Supply Chain & MLP ETF (together, the “Initial Funds”), each a series of the Trust, pursuant to an investment management agreement with the Trust (“Investment Management Agreement”).¹ Under the terms of the Investment Management

¹ Applicants request relief with respect to the Initial Funds, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an “Adviser”), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a “Subadvised Fund”). For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a “Feeder Fund”) may invest substantially all of their assets in a Subadvised Fund (a “Master Fund”) pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund’s sub-advisers.

Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (“Board”), provides continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.² The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a “Sub-Advisory Agreement”) and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f-2 under the Act.³ Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund’s net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure”).⁴

² As used herein, a “Sub-Adviser” for a Subadvised Fund is (1) an indirect or direct “wholly owned subsidiary” (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct “wholly-owned subsidiary” of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a “Wholly-Owned Sub-Adviser” and collectively, the “Wholly-Owned Sub-Advisers”), or (3) not an “affiliated person” (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund (“Non-Affiliated Sub-Advisers”).

³ The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (“Affiliated Sub-Adviser”).

⁴ For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund

¹⁴ 17 CFR 200.30-3(a)(12).