

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–82705; File No. SR–CboeBZX–2018–010]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt BZX Rule 14.11(k) To Permit the Listing and Trading of Managed Portfolio Shares and To List and Trade Shares of the ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge MidCap Growth ETF, ClearBridge Select ETF, and ClearBridge All Cap Value ETF

February 13, 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 February 5, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 filed a proposal to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. In addition, the Exchange proposes to list and trade shares of the following under proposed Rule 14.11(k): ClearBridge Appreciation ETF; ClearBridge Large Cap ETF; ClearBridge MidCap Growth ETF; ClearBridge Select ETF; and ClearBridge All Cap Value ETF.

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.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 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 parts 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 add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.³ In addition, the Exchange proposes to list and trade shares (“Shares”) of the following under proposed Rule 14.11(k): ClearBridge Appreciation ETF; ClearBridge Large Cap ETF; ClearBridge MidCap Growth ETF; ClearBridge Select ETF; and ClearBridge All Cap Value ETF (each, a “Fund” and, collectively, the “Funds”).

Proposed Listing Rules

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange’s Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(k)(2)(A) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of Managed Portfolio Shares. All statements or representations contained in such rule filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings

³ A Managed Portfolio Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (“1940 Act”) organized as an open-end investment management company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies.

or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules specified in the filing shall constitute continued listing requirements for such series of Managed Portfolio Shares. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Proposed Rule 14.11(k)(2)(B) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.⁴

Proposed Rule 14.11(k)(2)(C) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(D) provides that Authorized Participants (as defined in the Investment Company’s Form N–1A filed with the SEC) creating or redeeming Managed Portfolio Shares will sign an agreement with an agent (“AP Representative”) to establish a confidential account for the benefit of such AP that will deliver or receive all consideration from the issuer in a creation or redemption. An AP Representative may not disclose the consideration delivered or received in a creation or redemption.

Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the investment company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such investment company portfolio. Personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the custodian, or pricing verification agent for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition and/or changes to such Investment Company’s portfolio, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing,

⁴ 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

verification agent or other entity will erect and maintain a “fire wall” between such AP Representative, custodian, pricing verification agent, or other entity and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(3)(A) defines the term “Managed Portfolio Share” as a security that (a) is issued by a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number of shares equal to a Creation Unit, or multiples thereof, in return for a designated portfolio of securities (and/or an amount of cash) with a value equal to the next determined net asset value; and (c) when aggregated in the same specified aggregate number of shares equal to a Redemption Unit, or multiples thereof, may be redeemed at the request of an AP (as defined in the Investment Company’s Form N-1A filed with the Commission), which AP will be paid through a confidential account established for its benefit a portfolio of securities and/or cash with a value equal to the next determined net asset value (“NAV”).

Proposed Rule 14.11(k)(3)(B) defines the term “Verified Intraday Indicative Value” (“VIIV”) as the estimated indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours. The VIIV is monitored by an Investment Company’s pricing verification agent responsible for processing Consolidated Tape best bid and offer quotation information into more than one “Calculation Engines,” each of which then calculates a separate intraday indicative value for comparison by the pricing verification agent based on the mid-point of the

highest bid and lowest offer for the portfolio constituents of a series of Managed Portfolio Shares. A single VIIV will be disseminated publicly during Regular Trading Hours for each series of Managed Portfolio Shares; and the pricing verification agent will continuously compare the publicly-disseminated VIIV against one or more non-public alternative intra-day indicative values to which the pricing verification agent has access.⁵

Proposed Rule 14.11(k)(3)(C) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an AP in return for a designated portfolio of securities (and/or an amount of cash) specified each day consistent with the Investment Company’s investment objectives and policies.

Proposed Rule 14.11(k)(3)(D) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of securities and/or cash.

Proposed Rule 14.11(k)(3)(E) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the issuer of a series of Managed Portfolio Shares as the official source for calculating and reporting information relating to such series, including, the net asset value, or other information (with the exception of the VIIV) relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(k)(4)(F) defines the term “normal market conditions” as including, but not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria

⁵ Each Calculation Engine is a computer that receives a file from a real-time quote feed, calculates a price for the securities in the portfolio, and aggregates the weights of the securities in the portfolio to produce an intra-day indicative value.

applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.⁶ Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors every second during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will maintain surveillance procedures for securities listed under Rule 14.11(k) and will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 of, a series of Managed Portfolio Shares under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the value of the VIIV is no longer calculated or available to all market participants at the same time; (c) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the

⁶ Proposed Rule 14.11(k)(4) provides that if the Exchange becomes aware that the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

series of Managed Portfolio Shares; (d) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (e) if the Exchange submits a rule filing pursuant to Section 19(b) of the Securities Exchange Act of 1934 to permit the listing and trading of a series of Managed Portfolio Shares and any of the statements or representations contained in such rule filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules specified in the filing are not continuously maintained; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(k)(4)(B)(iii) provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the intraday indicative values calculated by more than one Calculation Engines to be compared by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one-second intervals, as required, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values calculated by the Calculation Engines no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being calculated and disseminated as required. The Investment Company or its agent shall be responsible for monitoring that the VIIV is being priced and disseminated as required and whether the intraday indicative values to be calculated by more than one Calculation Engines differ by more than 25 basis points for 60 seconds. In addition, if the Exchange becomes aware that the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value is available to all market participants.

Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 14.11(k)(5), which relates to limitation of Exchange liability, provides that Neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Key Features of Managed Portfolio Shares

While funds issuing Managed Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Managed Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under Rule 14.11(i)⁷ and for which a "Disclosed Portfolio" is

⁷ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 14.11(i). See, e.g., Securities Exchange Act Release Nos. 74193 (February 3, 2015), 80 FR 7066 (February 9, 2015) (SR-BATS-2014-054) (order approving the listing and trading of the iShares Short Maturity Municipal Bond Fund); 74297 (February 18, 2015), 80 FR 9788 (February 24, 2015) (SR-BATS-2014-056) (order approving the listing and trading of iShares U.S. Fixed Income Balanced Risk Fund). More recently, the Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (order approving proposed rule change to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares).

required to be disseminated at least once daily,⁸ the portfolio for an issue of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.⁹ The composition of the portfolio of an issue of Managed Portfolio Shares would not be available at commencement of Exchange listing and trading. Second, in connection with the creation and redemption of shares in "Creation Unit" or "Redemption Unit" size (as described below), the delivery of any portfolio securities in kind will be effected through a "Confidential Account" (as described below) for the benefit of the redeeming Authorized Participant ("AP") (as described below in "Creation and Redemption of Shares") without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value—the VIIV—that reflects an estimated intraday value of a fund's portfolio will be disseminated. With respect to the Funds, the VIIV will be based upon all of a Fund's holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by one or more major market data vendors every second during Regular Trading Hours. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Lead Market Makers that trade exchange-traded funds ("ETFs") on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV as long as

⁸ BZX Rule 14.11(i)(3)(B) defines the term "Disclosed Portfolio" as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁹ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940 Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. These forms are available to the public on the Commission's website at www.sec.gov.

a VIIV is disseminated every second, and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹⁰ This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge of a Fund’s underlying portfolio.¹¹

On each “Business Day” (as defined below), before commencement of trading in Shares on the Exchange, the Funds will provide to an “AP Representative” (as described below) of each AP the identities and quantities of portfolio securities that will form the basis for a Fund’s calculation of NAV per Share at the end of the Business Day, as well as the names and quantities of the instruments comprising a “Creation Basket” or the “Redemption Instruments” and the estimated “Balancing Amount” (if any) (as described below), for that day. This information will permit APs to purchase “Creation Units” or redeem “Redemption Units” through an in-kind transaction with a Fund, as described below.

Using various trading methodologies such as statistical arbitrage, both APs and “Non-AP Market Makers” will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an

¹⁰ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a Fund and that of another stock.

¹¹ APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund’s Shares until the spread narrows and the AP executes offsetting orders or the AP enters an order with its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. A non-AP Market Maker would be able to perform the same function but would be required to employ an AP to create or redeem Shares on its behalf.

The AP Representative’s execution of a Creation Unit in a Confidential Account,¹² combined with the sale of Fund Shares, may create downward pressure on the price of Shares and/or upward pressure on the price of the portfolio securities, bringing the market price of Shares and the value of a Fund’s portfolio securities closer together. Similarly, an AP could buy Shares and instruct the AP Representative to redeem Fund Shares and liquidate underlying portfolio securities in a Confidential Account. The AP’s purchase of a Fund’s Shares in the secondary market, combined with the liquidation of the portfolio securities from its Confidential Account by an AP Representative, may also create upward pressure on the price of Shares and/or downward pressure on the price of portfolio securities, driving the market price of Shares and the value of a Fund’s portfolio securities closer together. The “Adviser” (as defined below) represents that it understands that, other than the confidential nature of the account, this process is identical to how many APs currently arbitrage existing traditional ETFs.

APs can engage in arbitrage by creating or redeeming Shares if the AP believes the Shares are overvalued or undervalued. As discussed above, the trading of a Fund’s Shares and the creation or redemption of portfolio securities may bring the prices of a

¹² A Confidential Account is a restricted account owned by an AP and held at a broker-dealer who will act as an AP Representative (execution agent acting on agency basis) on their behalf. The restricted account will be established and governed via contract and used solely for creation and redemption activity, while protecting the confidentiality of the portfolio constituents. For reporting purposes, the books and records of the Confidential Account will be maintained by the AP Representative and provided to the appropriate regulatory agency as required. The Confidential Account will be liquidated daily, so that the account holds no positions at the end of day.

Fund’s Shares and its portfolio assets closer together through market pressure.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers may use the knowledge of a Fund’s means of achieving its investment objective, as described in the applicable Fund registration statement, to construct a hedging proxy for a Fund to manage a market maker’s quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. They will evaluate how their proxy performed in comparison to the price of a Fund’s Shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

Description of the Funds and the Trust

The Shares of each Fund will be issued by Precidian ETF Trust II (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.¹³ The investment adviser to the Trust will be Precidian Funds LLC (the “Adviser”). The Sub-Adviser to each of the Funds will be ClearBridge Investments, LLC (the “Sub-Adviser” or “ClearBridge”) Legg Mason Investor Services, LLC (the “Distributor”) will

¹³ The Trust will be registered under the 1940 Act. On April 4, 2017, the Trust filed a registration statement on Form N-1A relating to the Funds (File No. 811-23246) (the “Registration Statement”). The Shares will not be listed on the Exchange until an order (“Exemptive Order”) under the 1940 Act has been issued by the Commission with respect to the Exemptive Application. Investments made by the Funds will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement.

serve as the distributor of each of the Fund's Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of VIIV, reference asset, and intraday indicative values, and the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange.

As noted above, proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the investment company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such investment company portfolio.¹⁴ In addition, proposed Rule 14.11(k)(2)(E) further requires personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio. Proposed Rule 14.11(k)(2)(E) is similar to Rule 14.11(i)(7), related to Managed Fund Shares, and Rule 14.11(c)(5)(A)(i), related to Index Fund Shares, except that proposed Rule 14.11(k)(2)(E) relates to the establishment of a "fire wall" between the investment adviser and the broker-dealer as applicable to an Investment Company's portfolio, not an underlying

¹⁴ An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and the Sub-Adviser and their respective related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Sub-Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio.

In the event (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The portfolio for each Fund will consist primarily of long and/or short positions in U.S. exchange-listed securities and shares issued by other U.S. exchange-listed ETFs.¹⁵ All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

Description of the Funds

ClearBridge Appreciation ETF

The ClearBridge Appreciation ETF will seek to provide long-term appreciation of shareholders' capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed equity securities. The fund will typically invest in medium and large capitalization companies, but may also invest in small capitalization companies.

ClearBridge Large Cap ETF

The ClearBridge Large Cap ETF will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by taking long and possibly short positions in equity securities or groups of equities that the portfolio managers believe will provide long term capital appreciation. The Fund normally

¹⁵ For purposes of describing the holdings of the Funds, ETFs include Portfolio Depository Receipts (as described in Rule 14.11(b)); Index Fund Shares (as described in Rule 14.11(c)); and Managed Fund Shares (as described in Rule 14.11(i)). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs

invests at least 80% of its net assets (plus borrowings for investment purposes) in stocks included in the Russell 1000 Index and ETFs that primarily invest in stocks in the Russell 1000 Index. The Fund purchases securities that the Sub-Adviser believes are undervalued, and sells short securities that it believes are overvalued.

ClearBridge Mid Cap Growth ETF

The ClearBridge Mid Cap Growth ETF will seek long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The fund may invest in securities of issuers of any market capitalization.

ClearBridge Select ETF

The ClearBridge Select ETF will seek to provide long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The fund may invest in securities of issuers of any market capitalization.

ClearBridge All Cap Value ETF

The ClearBridge All Cap Value ETF will seeks long-term capital growth with current income as a secondary consideration. The Fund will seek to achieve its investment objective by investing primarily in common stocks and common stock equivalents, such as preferred stocks and securities convertible into common stocks, of companies the Sub-Adviser believes are undervalued in the marketplace. The Fund may invest up to 25% of its net assets in equity securities of foreign issuers through U.S. exchange-listed depositary receipts.

Other Investments

While each Fund, under normal market conditions, will invest primarily in U.S. exchange-listed securities, as described above, each Fund may invest its remaining assets in other securities and financial instruments, as described below.

According to the Registration Statement, each Fund may enter into repurchase agreements. It will be the policy of the Trust to enter into repurchase agreements only with recognized securities dealers, banks and Fixed Income Clearing Corporation, a

securities clearing agency registered with the Commission.

Each Fund may invest up to 5% of its total assets in warrants, rights and options.

Each Fund may invest a portion of its assets in cash or cash equivalents.¹⁶

Each Fund may invest in the securities of other investment companies (including money market funds) to the extent allowed by law.

Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),¹⁷ consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in 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 a Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.¹⁸

¹⁶ For purposes of this filing, cash equivalents include short-term instruments (instruments with maturities of less than 3 months) of the following types: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

¹⁷ In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

¹⁸ 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. 28193 (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

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") under the Internal Revenue Code.¹⁹

The Funds will not invest in securities listed on non-U.S. exchanges.

The Shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in futures, forwards or swaps.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (i.e., a Confidential Account) with an AP Representative,²⁰ which will be a bank or broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.²¹ An AP must be a Depository Trust Company ("DTC") Participant that has executed a "Participant Agreement" with the Distributor with respect to the creation and redemption of Creation Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP.

Each AP Representative will be given, before the commencement of trading

disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. 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). The Commission recently codified this long standing position in Rule 22e-4. See Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016) (adopting requirements for investment company liquidity risk management programs).

¹⁹ 26 U.S.C. 851.

²⁰ Each AP shall enter into its own separate Confidential Account with an AP Representative.

²¹ In the event that an AP Representative is a bank, the bank will be required to have an affiliated broker-dealer to accommodate the execution of hedging transactions on behalf of the holder of a Confidential Account.

each Business Day (defined below), the "Creation Basket" (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative, to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units.

In the case of a creation, the Authorized Participant would enter into an irrevocable creation order with the Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would be required, by the terms of the Confidential Account Agreement, to obfuscate the purchase by use of tactics such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the Fund.

Shares of each Fund will be issued in Creation Units of 5,000 or more Shares. The Funds will offer and sell Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading on the New York Stock Exchange ("NYSE") on each day that the NYSE is open. A "Business Day" is defined as any day that the Exchange is open for business. The Funds will sell and redeem Creation Units and Redemption Units only on Business Days. The Adviser anticipates that the initial price of a Share will range from \$20 to \$60, and that the price of a Creation Unit will initially range from \$100,000 to \$300,000.

In order to keep costs low and permit each Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Registration Statement, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption Instruments" through the AP Representative in their Confidential

Account).²² On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the “Creation Basket.”²³

As noted above, each AP will be required to establish a Confidential Account with an AP Representative and transact with each Fund through that Confidential Account.²⁴ Therefore, before the commencement of trading on each Business Day, the AP Representative of each AP will be provided, on a confidential basis and at the same time as other Authorized Participants, with a list of the names and quantities of the instruments comprising a Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the “Portfolio Deposit.”

APs will enter into an agreement with an AP Representative to open a Confidential Account, for the benefit of the AP. The AP Representative will serve as an agent between a Fund and each AP and act as a broker-dealer on behalf of the AP. Each day, the Custodian (defined below) will transmit the Fund Constituent file to each AP Representative and, acting on execution instructions from AP, the AP Representative may purchase or sell the

securities currently held in a Fund’s portfolio for purposes of effecting in-kind creation and redemption activity during the day.²⁵

As with the AP, Non-Authorized Participant Market Makers will have the ability to facilitate efficient market making in the Shares. However, Non-Authorized Participant Market Makers will not have the ability to create or redeem shares directly with a Fund. Rather, if a Non-Authorized Participant Market Maker wishes to create Shares in a Fund, it will have to do so through an AP.

Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

Shares may be purchased from a Fund by an AP for its own account or for the benefit of a customer. The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund’s prospectus or Statement of Additional Information (“SAI”). Purchases of Shares will be settled in-kind or cash for an amount equal to the applicable NAV per Share purchased plus applicable “Transaction Fees,” as discussed below.

The NAV of each Fund is expected to be determined once each Business Day at a time determined by the Trust’s Board of Directors (“Board”), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the “Valuation Time”). Each Fund will establish a cut-off time (“Order Cut-Off Time”) for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

²⁵ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

All orders to purchase Creation Units must be received by the Distributor no later than the scheduled closing time of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) in each case on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.²⁶ The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases.²⁷

Transaction Fees

The Trust may impose purchase or redemption transaction fees (“Transaction Fees”) in connection with the purchase or redemption of Shares from the Funds. The exact amounts of any such Transaction Fees will be determined by the Adviser. The purpose of the Transaction Fees is to protect the continuing shareholders against possible dilutive transactional expenses, including operational processing and brokerage costs, associated with establishing and liquidating portfolio positions, including short positions, in connection with the purchase and redemption of Shares.

Purchases of Shares—Secondary Market

Only APs will be able to acquire Shares at NAV directly from a Fund through the Distributor. The required payment must be transferred in the manner set forth in a Fund’s SAI by the specified time on the second DTC settlement day following the day it is transmitted (the “Transmittal Date”). These investors and others will also be able to purchase Shares in secondary market transactions at prevailing market prices.

Redemption

Beneficial Owners may sell their Shares in the secondary market. Alternatively, investors that own enough Shares to constitute a Redemption Unit (currently, 25,000 Shares) or multiples thereof may redeem those Shares through the Distributor, which will act as the Trust’s representative for redemption. The size

²⁶ A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

²⁷ A AP Representative will provide information related to creations and redemption of Creation Units to the Financial Industry Regulatory Authority (“FINRA”) upon request.

²² The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

²³ In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis, whether for a given day or a given order, the key consideration will be the benefit that would accrue to a Fund and its investors. The Adviser represents that the Funds do not currently anticipate the need to sell or redeem Creation Units entirely on a cash basis.

²⁴ The Adviser represents that transacting through a Confidential Account is similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

of a Redemption Unit will be subject to change. Redemption orders for Redemption Units or multiples thereof must be placed by or through an AP.

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP ("AP Redemption Order"). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of the Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time. The Order Cut-Off Time for a Fund will ordinarily be its Valuation Time, or may be prior to the Valuation Time if the Board determines that an earlier Order Cut-Off Time for redemption of Redemption Units is necessary and is in the best interests of Fund shareholders.

In the case of a redemption, the Authorized Participant would enter into an irrevocable redemption order, and then immediately instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics. The positions in the underlying portfolio securities sold from the Confidential Account would be covered by the in-kind redemption proceeds received by the Confidential Account from the Fund.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the NYSE is closed other than customary weekend and holiday closings, (2) any period during which trading on the NYSE is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash.²⁸ The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²⁹ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions. While a Fund will generally distribute securities in-kind, the Adviser may determine from time to time that it is not in a Fund's best interests to distribute securities in-kind, but rather to sell securities and/or distribute cash. For example, the Adviser may distribute cash to facilitate orderly portfolio management in connection with rebalancing or transitioning a portfolio in line with its investment objective, or if there is substantially more creation than redemption activity during the period immediately preceding a redemption request, or as necessary or appropriate in accordance with applicable laws and regulations. In this manner, a Fund can use in-kind redemptions to reduce the unrealized capital gains that may, at times, exist in a Fund by distributing low cost lots of each security that a Fund needs to dispose of to maintain its desired portfolio exposures. Shareholders of a Fund would benefit from the in-kind redemptions through the reduction of the unrealized capital gains in a Fund that would otherwise have to be realized and, eventually, distributed to shareholders.

The redemption basket will consist of the same securities for all APs on any given day subject to the Adviser's ability to make minor adjustments to address odd lots, fractional shares, tradeable sizes or other situations.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account on a pro rata basis (which securities are determined by the Adviser) with a value approximately equal to the value of the Shares.³⁰

²⁸ It is anticipated that any portion of a Fund's NAV attributable to appreciated short positions will be paid in cash, as securities sold short are not susceptible to in-kind settlement. The value of other positions not susceptible to in-kind settlement may also be paid in cash.

²⁹ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The terms of the Confidential Account will provide that the trust be formed under applicable state laws; the Custodian may act as AP Representative of the Confidential Account; and the AP Representative will be paid by the AP a fee negotiated directly between the APs and the AP Representative(s).

³⁰ If the NAV of the Shares redeemed differs from the value of the securities delivered to the

tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP.³¹ The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash balancing amount to the AP through DTC.³² The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of that account's AP, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, a Fund will deliver cash equal to the value of that security. APs and Non-Authorized Participant Market Makers will provide the AP Representative with a list of restricted securities applicable to the AP or Non-Authorized Participant Market Maker on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

To address odd lots, fractional shares, tradeable sizes or other situations where dividing securities is not practical or possible, the Adviser may make minor adjustments to the pro rata portion of portfolio securities selected for distribution to each redeeming AP on such Business Day.

The Trust will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Trust and must be preceded or accompanied by an irrevocable commitment to deliver the requisite

applicable Confidential Account, the Fund will pay a cash balancing amount to compensate for the difference between the value of the securities delivered and the NAV.

³¹ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during normal trading hours.

³² Under applicable provisions of the Internal Revenue Code, the AP is expected to be deemed a "substantial owner" of the Confidential Account because it receives distributions from the Confidential Account. As a result, all income, gain or loss realized by the Confidential Account will be directly attributed to the AP. In a redemption, the AP will have a basis in the distributed securities equal to the fair market value at the time of the distribution and any gain or loss realized on the sale of those Shares will be taxable income to the AP.

number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares versus subsequent payment against the proceeds, if any, of the sale of portfolio securities distributed to the applicable Confidential Account plus or minus any cash balancing amounts, and less the expenses of liquidation.

Independent Pricing Calculations

According to the Exemptive Application, the Pricing Verification Agent, on behalf of each Fund, will utilize at least two separate calculation engines to calculate intra-day indicative values ("Calculation Engines"), based on the mid-point between the current national best bid and offer disseminated by the Consolidated Quotation System ("CQS") and Unlisted Trading Privileges ("UTP") Plan Securities Information Processor,³³ to provide the real-time value on a per Share basis of each Fund's holdings every second during the Exchange's Core Trading Session.³⁴ The Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for the Fund's calculation of NAV at the end of the Business Day,³⁵ plus any cash in the portfolio, to the Pricing Verification Agent for purposes of pricing.

According to the Exemptive Application, it is anticipated that each Calculation Engine could be using some combination of different hardware, software and communications platforms to process the CQS data. Different hardware platforms' operating systems could be receiving and calculating the CQS data inputs differently, potentially resulting in one Calculation Engine processing the indicative value in a

different time slice than another Calculation Engine's system, thus processing values in different sequences. The processing differences between different Calculation Engines will most likely be in the sub-second range. Consequently, the frequency of occurrence of out of sequence values among different Calculation Engines due to differences in operating system environments should be minimal. Other factors that could result in sequencing that is not uniform among the different Calculation Engines are message gapping, internal system software design, and how the CQS data is transmitted to the Calculation Engine. While the expectation is that the separately calculated intraday indicative values will generally match, having dual streams of redundant data that must be compared by the Pricing Verification Agent will provide an additional check that the resulting VIIV is accurate.

According to the Exemptive Application, each Fund's Board has a responsibility to oversee the process of calculating an accurate VIIV and to make an affirmative determination, at least annually, that the procedures used to calculate the VIIV and maintain its accuracy are, in its reasonable business judgment, appropriate.

These procedures and their continued effectiveness will be subject to the ongoing oversight of the Fund's chief compliance officer. The specific methodology for calculating the VIIV will be disclosed on each Fund's website. While each Fund will oversee the calculation of the VIIV, a Fund will utilize multiple Calculation Engines, one of which may be supplied by the Pricing Verification Agent.

Net Asset Value

The NAV per Share of a Fund will be computed by dividing the value of the net assets of a Fund (*i.e.* the value of its total assets less total liabilities) by the total number of Shares of a Fund outstanding, rounded to the nearest cent. Expenses and fees, including, without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. Interest and investment income on the Trust's assets accrue daily and will be included in the Fund's total assets. The NAV per Share for a Fund will be calculated by a Fund's administrator ("Administrator") and determined as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m., E.T.) on each day that the NYSE is open.

Shares of exchange-listed equity securities and exchange listed options

will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the securities are primarily traded at the time of valuation. Repurchase agreements will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Money market funds will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service. Cash equivalents will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers. Options not listed on an exchange, rights and warrants will be valued based on price quotations or other equivalent indications of value provided by a third-party pricing service.

When last sale prices and market quotations are not readily available, are deemed unreliable or do not reflect material events occurring between the close of local markets and the time of valuation, investments will be valued using fair value pricing as determined in good faith by the Adviser under procedures established by and under the general supervision and responsibility of the Trust's Board of Trustees. Investments that may be valued using fair value pricing include, but are not limited to: (1) Securities that are not actively traded; (2) securities of an issuer that becomes bankrupt or enters into a restructuring; and (3) securities whose trading has been halted or suspended.

The frequency with which each Fund's investments will be valued using fair value pricing will primarily be a function of the types of securities and other assets in which the respective Fund will invest pursuant to its investment objective, strategies and limitations. If the Funds invest in open-end management investment companies registered under the 1940 Act (other than ETFs), they may rely on the NAVs of those companies to value the shares they hold of them.

Valuing the Funds' investments using fair value pricing involves the consideration of a number of subjective factors and thus the prices for those investments may differ from current market valuations. Accordingly, fair value pricing could result in a difference between the prices used to calculate NAV and the prices used to determine a Fund's VIIV, which could result in the market prices for Shares deviating from NAV. In cases where the fair value price of the security is materially different from the midpoint of the bid/ask spread provided to the

³³ According to the Exemptive Application, all Commission-registered exchanges and market centers send their trades and quotes to a central consolidator where the Consolidated Tape System (CTS) and CQS data streams are produced and distributed worldwide. See <https://www.ctapl.com/index>. Although there is only one source of market quotations, each Calculation Engine will receive the data directly and calculate an indicative value separately and independently from each other Calculation Engine.

³⁴ The Adviser represents that the dissemination of VIIV at one second intervals strikes a balance of providing all investors with useable information at a rate that can be processed by retail investors, does not provide so much information so as to allow market participants to accurately determine the constituents, and their weightings, of the portfolio, can be accurately calculated and disseminated, and still provides professional traders with per second data.

³⁵ Under accounting procedures followed by the Funds, trades made on the prior Business Day (T) will be booked and reflected in the NAV on the current Business Day (T+1). Thus, the VIIV calculated throughout the day will be based on the same portfolio as is used to calculate the NAV on that day.

Calculation Engine and the Adviser determined that the ongoing pricing information is not likely to be reliable, the fair value will be used for calculation of the VIIV, and a Fund's Custodian will be instructed to disclose the identity and weight of the fair valued securities, as well as the fair value price being used for the security.

Availability of Information

The Funds' website (www.precidianfunds.com), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for each Fund that may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, (1) daily trading volume, the prior Business Day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),³⁶ 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. The website and information will be publicly available at no charge.

As noted above, a mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940 Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

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. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Updated price

information for U.S. exchange-listed equity securities is available through major market data vendors or securities exchanges trading such securities. The intraday, closing and settlement prices of money market funds, repurchase agreements, reverse repurchase agreements and cash equivalents will be readily available from published or other public sources, or major market data vendors such as Bloomberg and Thomson Reuters. The NAV of any investment company security investment will be readily available on the website of the relevant investment company and from major market data vendors. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(k)(3)(B) and as described further below, will be widely disseminated by one or more major market data vendors at least every second during Regular Trading Hours.

Dissemination of the VIIV

The VIIV, which is approximate value of each Fund's investments on a per Share basis, will be disseminated every second during Regular Trading Hours. The VIIV should not be viewed as a "real-time" update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day.

The VIIV for each Fund will be disseminated by one or more major market data vendors in one-second intervals during Regular Trading Hours. The VIIV is essentially an intraday NAV calculation at least every second during Regular Trading Hours. Each Fund will adopt procedures governing the calculation of the VIIV. Pursuant to those procedures, the VIIV will include all accrued income and expenses of a Fund and will assure that any extraordinary expenses booked during the day that would be taken into account in calculating a Fund's NAV for that day are also taken into account in calculating the VIIV. For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. If the Adviser determines that the mid-point of the bid/ask spread is inaccurate, a Fund will use fair value pricing. That fair value pricing will be carried over to the next day's VIIV until the first trade in that stock is reported unless the Adviser deems a particular portfolio security to be illiquid and/or the available ongoing pricing information unlikely to be reliable. In such case, that fact will be disclosed as soon as

practicable on each Fund's website, including the identity and weighting of that security in a Fund's portfolio, and the impact of that security on VIIV calculation, including the fair value price for that security being used for the calculation of that day's VIIV.

The Adviser represents that, by utilizing the mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and more accurate representation of the real time value of the underlying securities is provided to the market. Specifically, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. Using quotations rather than last sale information addresses concerns regarding the staleness of pricing information of less actively traded securities. Because quotations are updated more frequently than last sale information especially for inactive securities, the VIIV will be based on more current and accurate information. The use of quotations will also dampen the impact of any momentary spikes in the price of a portfolio security.

Each Fund will utilize two separate pricing feeds to provide two separate sources of pricing information. Each Fund will also utilize a "Pricing Verification Agent" and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare the multiple intraday indicative values from the Calculation Engines on a real time basis.³⁷ A single VIIV will be disseminated publicly for each Fund; however, the Pricing Verification Agent will continuously compare the public VIIV against a non-public alternative intra-day indicative value to which the Pricing Verification Agent has access. Upon notification to the Exchange by the issuer of a series of Managed Portfolio Shares or its agent that the public VIIV and non-public alternative intra-day indicative value differ by more than 25 basis points for 60 seconds, the Exchange will halt trading as soon as practicable in a Fund until the discrepancy is resolved.³⁸ Each Fund's

³⁷ A Fund's Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for a Fund's calculation of NAV at the end of the Business Day, plus any cash in the portfolio, to the Pricing Verification Agent for purposes of pricing.

³⁸ A continuous deviation for sixty seconds could indicate an error in the feed or in a Calculation Engine. The Trust reserves the right to change these thresholds to the extent deemed appropriate and approved by a Fund's Board.

³⁶ The Bid/Ask Price of a Fund will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

Board will review the procedures used to calculate the VIIV and maintain its accuracy as appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's website.

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 of the Funds. 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, including whether 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 proposed Rule 14.11(k)(4)(B)(iii), which sets forth circumstances under which Shares of the Funds 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. Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). As provided in BZX 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.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(k). The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.³⁹ A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per Share of each Fund will be calculated daily and will be made available to all market participants at the same time.

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 Managed Portfolio Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a 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. If a 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, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the Intermarket Surveillance Group ("ISG"), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴⁰

The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

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

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that

members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (5) trading information.

In addition, the Circular will reference that the Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁴¹ in general and Section 6(b)(5) of the Act⁴² in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(A) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading. In addition, the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by one or more major market data vendors every second during Regular Trading Hours. Proposed Rule 14.11(k)(4)(B)(iii)

³⁹ See 17 CFR 240.10A-3.

⁴⁰ For a list of the current members of ISG, see www.isgportal.org.

⁴¹ 15 U.S.C. 78f.

⁴² 15 U.S.C. 78f(b)(5).

provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the intraday indicative values calculated from more than one Calculation Engines to be compared by the Investment Company's pricing verification agent differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one-second intervals, as required, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being calculated and disseminated as required. Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the custodian or pricing verification agent for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition and/or changes to such Investment Company's portfolio, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing verification agent or other entity will erect and maintain a "fire wall" between such AP Representative, custodian, pricing verification agent, or other entity and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the

applicable Investment Company portfolio.

With respect to the proposed listing and trading of Shares of the Funds, 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 in Rule 14.11(k). Price information for the exchange-listed equity securities held by the Funds will be available through major market data vendors or securities exchanges listing and trading such securities. All exchange-listed equity securities held by the Funds will be listed on U.S. national securities exchanges. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Funds will primarily hold U.S.-listed equity securities and shares issued by other U.S.-listed ETFs. All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges. A Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage. The Funds will not invest in non-U.S.-listed securities. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. An AP Representative will provide information related to creations and redemption of Creation Units and Redemption Instruments to FINRA upon request. The Funds' Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances referred to above.

The Exchange, after consulting with various Lead Market Makers that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, market makers have knowledge of a Fund's means of

achieving its investment objective even without daily disclosure of a fund's underlying portfolio. The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The Lead Market Makers also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by Lead Market Makers were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly

portfolio disclosure and the ability to create shares in creation unit size.

The real-time dissemination of a fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets⁴³ or by netting the exposure against other, offsetting trading positions—much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV every second, should permit professional investors to engage easily in this type of hedging activity.⁴⁴

⁴³ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

⁴⁴ With respect to trading in Shares of the Funds, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity

of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. The Adviser expects that market participants will initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge—buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

With respect to trading of Shares of the Funds, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which the Funds plan to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The real-time dissemination of a Fund's VIIV together with the ability of APs to create and redeem each day at the NAV, will be crucial for market participants to value and trade Shares in a manner that will not lead to significant deviations between the Shares' Bid/Ask Price and NAV.⁴⁵

In a typical Index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. The

⁴⁵ The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on representation by the Adviser and review by the Exchange.

Adviser represents that the in-kind creations and redemptions through a Confidential Account will preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

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 an issue of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, shareholder reports, and its Form N-CSR, Form N-Q and Form N-SAR. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR, Form N-Q and Form N-SAR may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated every second throughout Regular Trading Hours by one or more major market data vendors. The website for the Funds will include a form of the prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis.

Moreover, prior to the commencement of trading, the Exchange will inform its members in a 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 BZX Rule 11.18, market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to proposed Rule 14.11(k)(4)(B)(iii), which sets forth circumstances under which Shares of the Funds will be halted. In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in futures, forwards or swaps. Each Fund's investments will be consistent with its investment objective and will not be used to enhance

leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

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 an additional type of actively-managed exchange-traded product 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 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 VIIV and quotation and last sale information for the Shares.

For the above reasons, the Exchange believes that the proposed rule change 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 purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, 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. 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-CboeBZX-2018-010 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-2018-010. 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-2018-010 and should be submitted on or before March 13, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁶

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018-03313 Filed 2-16-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82702; File No. SR-NASDAQ-2018-008]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify the Listing Requirements Contained in Listing Rule 5635(d) To Change the Definition of Market Value for Purposes of the Shareholder Approval Rules and Eliminate the Requirement for Shareholder Approval of Issuances at a Price Less Than Book Value but Greater Than Market Value

February 13, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 30, 2018, The Nasdaq Stock Market LLC ("Nasdaq" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 modify the listing requirements contained in Listing Rule 5635(d) to change the definition of market value for purposes of the shareholder approval rules and eliminate the requirement for shareholder approval of issuances at a price less than book value but greater than market value.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

⁴⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.