

All submissions should refer to File Number SR-ICC-2019-009. 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, security-based swap submission, or advance notice that are filed with the Commission, and all written communications relating to the proposed rule change, security-based swap submission, or advance notice 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 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>.

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-ICC-2019-009 and should be submitted on or before September 18, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86737; File No. SR-CboeBZX-2019-044]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust To Hold Certain Instruments in a Manner That May Not Comply With Rule 14.11(i), Managed Fund Shares

August 22, 2019.

#### I. Introduction

On May 15, 2019, Cboe BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to allow the JPMorgan Core Plus Bond ETF of the J.P. Morgan Exchange-Traded Fund Trust ("Trust") to hold certain instruments in a manner that may not comply with BZX Rule 14.11(i), Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on June 3, 2019.<sup>3</sup> On July 10, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> The Commission has received no comment letters on the proposed rule change. The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### II. Description of the Proposal

The Shares began trading on the Exchange on January 30, 2019, pursuant to the generic listing standards applicable to Managed Fund Shares under Rule 14.11(i) ("Generic Listing Standards") and are currently listed on the Exchange pursuant to a rule filing

that was approved by the Commission on April 22, 2019 granting certain exceptions to the Generic Listing Standards.<sup>7</sup> The Original Approval Order allows the Fund to hold instruments in a manner that may not comply with Rule 14.11(i)(4)(C)(ii)(d),<sup>8</sup> Rule 14.11(i)(4)(C)(iv)(b),<sup>9</sup> and Rule 14.11(i)(4)(C)(i).<sup>10</sup> Otherwise, the Exchange represents that the Fund complies with all other listing requirements on an initial and continued listing basis under Rule 14.11(i).

While the Fund currently meets all of the continued listing requirements

<sup>7</sup> See Securities Exchange Act Release No. 85701 (April 22, 2019) (SR-CboeBZX-2019-016) ("Original Approval Order").

<sup>8</sup> Rule 14.11(i)(4)(C)(ii)(d) provides that "component securities that in aggregate account for at least 90% of the fixed income weight of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of \$700 million or more; (c) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least \$1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country." The Original Approval Order allows the fixed income portion of the portfolio excluding ABS and Private MBS, as defined below, to satisfy this 90% requirement.

<sup>9</sup> Rule 14.11(i)(4)(C)(iv)(b) provides that "the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures)." The Original Approval Order allows the Fund to be exempt from this requirement as it relates to the Fund's holdings in Eurodollar and G-7 Sovereign Futures and Options (as defined in the Original Approval Order). Pursuant to the Original Approval Order, the Fund may also hold other listed derivatives, which include only the following: Debt futures, interest rate futures, index futures, foreign exchange futures, equity options, equity futures, Treasury options, options on Treasury futures, interest rate swaps, foreign exchange options, foreign exchange swaps, credit default swaps (including single-name and index reference pools), loan credit default swap indices, and inflation-linked swaps; however such holdings will, when calculated independently of the Fund's holdings in Eurodollar and G-7 Sovereign Futures and Options, will meet the requirements of Rule 14.11(i)(4)(C)(iv)(b).

<sup>10</sup> The Original Approval Order allows the Fund to be issued certain equity instruments ("Equity Holdings") that may not meet the requirements of Rule 14.11(i)(4)(C)(i), which sets forth generic listing standards for equity securities held by a fund listed under Rule 14.11(i). Pursuant to the Original Approval Order, the Fund will not purchase Equity Holdings and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders, and such holdings will not constitute more than 10% of the Fund's net assets. The Adviser expects that the Fund will generally acquire such instruments through issuances that it receives by virtue of its other holdings, such as corporate actions or convertible securities.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 85948 (May 28, 2019), 84 FR 25579 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 86348, 84 FR 34040 (July 16, 2019). The Commission designated September 1, 2019, as the date by which the Commission shall approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>20</sup> 17 CFR 200.30-3(a)(12).

applicable under the Original Approval Order, the Exchange states that the Adviser would like to increase the flexibility of the Fund's holdings in a way that might not meet such requirements. As such, the Exchange has submitted this proposal in order to allow the Shares to continue listing and trading on the Exchange while holding certain instruments in a manner that may not comply with certain requirements under the Generic Listing Standards, in addition to the ones described in the Original Approval Order, as further described below. The Exchange states that the Fund will continue to meet the continued listing obligations under the Original Approval Order until and unless this proposal is approved.

#### A. Description of the Fund

The Shares are offered by the Trust, which was established as a Delaware statutory trust.<sup>11</sup> J.P. Morgan Investment Management, Inc. is the investment adviser ("Adviser") to the Fund.<sup>12</sup> JPMorgan Chase Bank, N.A. is the administrator, custodian, and transfer agent for the Trust and JPMorgan Distribution Services, Inc. serves as the distributor for the Trust.

According to the Exchange, the Fund is an actively managed exchange-traded fund that will seek a high level of current income by investing primarily in a diversified portfolio of high, medium, and low-grade debt securities. The Fund seeks to achieve its

investment objective by investing, under Normal Market Conditions,<sup>13</sup> at least 80% of its net assets in Bonds.<sup>14</sup> Among others, such securities include (i) U.S. or foreign mortgage-backed securities ("MBS");<sup>15</sup> and (ii) U.S. or foreign asset-backed securities ("ABS").<sup>16</sup>

Under Normal Market Conditions, the Fund may also invest up to 20% of its net assets in (i) cash and certain Cash

<sup>13</sup> As defined in Rule 14.11(i)(3)(E), the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, or political conditions, the Fund reserves the right to invest in cash and Cash Equivalents, as defined below, without limitation, as determined by the Adviser.

<sup>14</sup> For purposes of the proposal, the term "Bond" includes only the following: Corporate bonds, U.S. government and agency debt securities, asset-backed securities, municipal securities, credit linked notes, participation notes, collateralized debt obligations, agency, non-agency and stripped mortgage-related and mortgage-backed securities (including adjustable rate mortgage loans), convertible securities (including contingent convertible securities), preferred stock, loan participations and assignments, commitments to loan assignments, variable and floating rate instruments, commercial paper, and foreign and emerging market debt securities. The Adviser intends to hold asset-backed securities, mortgage-related and mortgage-backed securities as part of a strategy designed to manage portfolio risk by diversifying away from corporate debt and to take advantage of certain market environments.

<sup>15</sup> The Exchange states that for purposes of this proposal, MBS include only collateralized mortgage obligations ("CMOs"), which are debt obligations collateralized by mortgage loans or mortgage pass-through securities. Typically, CMOs are collateralized by Ginnie Mae, Fannie Mae or Freddie Mac certificates, but they may also be collateralized by whole loans or pass-through securities issued by private issuers (*i.e.*, issuers other than U.S. government agencies or government-sponsored entities) ("Private MBS"). Payments of principal and of interest on the mortgage-related instruments collateralizing the MBS, and any reinvestment income thereon, provide the funds to pay debt service on the CMOs. In a CMO, a series of bonds or certificates is issued in multiple classes. Each class of CMOs, often referred to as a "tranche" of securities, is issued at a specified fixed or floating coupon rate and has a stated maturity or final distribution date.

<sup>16</sup> According to the Exchange, ABS are securitized products in connection with which the securities issued, which may be issued by either a U.S. or a foreign entity, are collateralized by any type of financial asset, such as a consumer or student loan, a lease, or a secured or unsecured receivable. The Exchange states that for purposes of this filing, ABS exclude: (i) MBS; (ii) a small business administration backed ABS traded "To Be Announced" or in a specified pool transaction as defined in FINRA Rule 6710(x); and (iii) U.S. or foreign collateralized debt obligations. As described below, the holdings of the Fund may not meet from the requirements of Rule 14.11(i)(4)(C)(ii)(e) in that the Fund's holdings in ABS and Private MBS (together, "ABS and Private MBS") may reach up to 40% of the weight of the fixed income portion of the Fund's portfolio.

Equivalents<sup>17</sup> that are not otherwise captured under the definition of Bond, (ii) listed derivative instruments,<sup>18</sup> and OTC derivative instruments.<sup>19</sup> The Fund's holdings in Cash Equivalents and OTC derivative instruments will be in compliance with the limitations provided in Rules 14.11(i)(4)(C)(iii) and 14.11(i)(4)(C)(v), respectively, and both listed and OTC derivative instruments will be in compliance with the limitations of Rule 14.11(i)(4)(C)(vi).<sup>20</sup>

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

The Fund's investments, including derivatives, will be consistent with the 1940 Act and the Fund's investment objective and policies and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage).<sup>21</sup> That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple

<sup>17</sup> "Cash Equivalents" are defined in BZX Rule 14.11(i)(4)(C)(iii)(b).

<sup>18</sup> See *supra* note 9.

<sup>19</sup> The Exchange states that for purposes of this filing, OTC derivative instruments include only the following: Index options, foreign exchange options, swaptions, credit default swaps (including single-name and index reference pools), foreign exchange swaps, loan credit default swap indices, inflation-linked swaps, interest rate swaps, non-dollar swaps, non-deliverable forward contracts and foreign exchange forward contracts.

<sup>20</sup> As noted above and allowed under the Original Approval Order, the Fund may by virtue of its Bond holdings be issued certain Equity Holdings that may not meet the requirements of Rule 14.11(i)(4)(C)(i). See *supra* note 10.

<sup>21</sup> The Fund will include appropriate risk disclosure in its offering documents, including leveraging risk. Leveraging risk is the risk that certain transactions of a fund, including a fund's use of derivatives, may give rise to leverage, causing a fund to be more volatile than if it had not been leveraged. To mitigate leveraging risk, the Fund will segregate or earmark liquid assets determined to be liquid by the Adviser in accordance with procedures established by the Trust's Board and in accordance with the 1940 Act (or, as permitted by applicable regulations, enter into certain offsetting positions) to cover its obligations under derivative instruments. These procedures have been adopted consistent with Section 18 of the 1940 Act and related Commission guidance.

<sup>11</sup> The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On January 23, 2019, the Trust filed with the Commission its registration statement ("Registration Statement") on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-191837 and 811-22903). In addition, the Exchange represents that the Trust has obtained an order from the Commission granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (February 9, 2016) (File No. 812-13761).

<sup>12</sup> According to the Exchange, the Adviser is not a registered broker-dealer, but is affiliated with multiple broker-dealers and has implemented and will maintain "fire walls" with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio. In addition, Adviser personnel who make decisions regarding the Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser becomes registered as a broker-dealer or newly affiliated with another broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition 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.

(i.e., 2Xs and 3Xs) of the Fund's primary broad-based securities benchmark index (as defined in Form N-1A). The Fund will only use those derivatives described above. The Fund's use of derivative instruments will be collateralized.

#### *B. Proposed Modifications to the Application of Generic Listing Standards*

The Exchange states that it is submitting this proposal in order to allow the Fund to hold instruments in a manner that may not comply with Rule 14.11(i)(4)(C)(ii)(a)<sup>22</sup> and Rule 14.11(i)(4)(C)(ii)(e).<sup>23</sup> Except for such requirements and except for the exceptions to the Generic Listing Standards provided in the Original Approval Order,<sup>24</sup> the Exchange states that the Fund will meet all requirements under Rule 14.11(i).

With respect to Rule 14.11(i)(4)(C)(ii)(a), the Exchange is proposing to reduce from 75% to 60% the weight of the fixed income portion of the portfolio that would be required to have a minimum original principal amount outstanding of \$100 million or more. The Exchange states that, based on the types of securities held by the Fund, it believes such a proposal is not such a significant change in the composition of the fixed income portion of the portfolio as to meaningfully undercut the policy rationale underlying the rule. The Exchange states that Rule 14.11(i)(4)(C)(ii)(a) is intended to ensure that the fixed income holdings of a series of Managed Fund Shares are sufficiently large as to prevent manipulation in the underlying holdings. The Exchange states that the types of fixed income securities held by the Fund will often be in tranches of less than \$100 million dollars; however,

many such securities would be part of a deal with an underlying collateral pool well over a \$100 million dollars, and often greater than \$500 million, making them less susceptible to manipulation than many other securities with a minimum original principal greater than \$100 million. The Exchange states that the total deal size of many of the securities held by the Fund are significantly larger than the tranches on which the testing for the rule is based and would mitigate the concerns that Rule 14.11(i)(4)(C)(ii)(a) is intended to address. The Exchange further states that the proposed change represents a slight reduction to the applicable standard, which, combined with the other reasons described above, the Exchange believes will continue to mitigate the policy concerns that Rule 14.11(i)(4)(C)(ii)(a) is intended to address.

The Exchange is also proposing to allow the Fund to hold up to 40% of the weight of the fixed income portion of its portfolio in ABS and Private MBS. The Exchange states that such holdings are part of a strategy designed to manage the Fund's portfolio risk by diversifying away from corporate debt and to take advantage of certain market environments. The Exchange states that this strategy will be actively managed by the Adviser and will adapt to both changing market environments and shifts in the underlying holdings of the Fund, but would be overly limited by the restriction in Rule 14.11(i)(4)(C)(ii)(e) that prevents the Fund from holding more than 20% of the portfolio in ABS and Private MBS. The Exchange states that the Fund will utilize ABS and Private MBS as a means to diversify its portfolio of Bonds, which is intended to lower the volatility of the portfolio through a market cycle (typically three to five years). The Exchange also states that greater exposure to the ABS and Private MBS would allow the Fund the flexibility to fully implement its risk mitigation strategy, while still limiting the Fund's holdings in ABS and Private MBS to 40% of the fixed income portion of the portfolio.

Further, because the Exchange is proposing to allow the Fund's holdings in ABS and Private MBS to increase from 20% to 40% of the fixed income portion of the portfolio, as described above, the circumstances under which the exception to Rule 14.11(i)(4)(C)(ii)(d) was approved in the Original Approval Order would also be changed. The Original Approval Order provided that the requirements of Rule

14.11(i)(4)(C)(ii)(d)<sup>25</sup> would apply only to the Fund's holdings in fixed income securities that are not ABS and Private MBS, and holdings in ABS and Private MBS would be limited to 20% of the fixed income portion of the portfolio. The Exchange states that it believes continuing to allow this exception to the Generic Listing Requirements is consistent with the Act even though the Exchange is proposing to increase the Fund's permitted holdings in ABS and Private MBS to 40% of the weight of the fixed income portion of the portfolio. The Exchange states that the risk of manipulation of the Fund's investments in ABS and Private MBS is mitigated because the Adviser expects that all of its fixed income holdings will issue Statements to Noteholders on a no less frequent than quarterly basis.<sup>26</sup> Further, the Adviser represents that permitting limited investments in ABS and Private MBS, as described above, would be in

<sup>25</sup> See *supra* note 8.

<sup>26</sup> While the Adviser expects that all of its fixed income holdings will issue Statements to Noteholders, it cannot guarantee that the holdings will issue Statements to Noteholders. While Rule 14.11(i)(4)(C)(ii)(d) subparagraph (a) includes in the 90% calculation all fixed income securities that are required to file reports pursuant to Sections 13 or 15(d) of the Act, many fixed income securities include in the bond indenture a requirement that the issuer make a public disclosure of a Statement to Noteholders even where they are not required to file such reports. Rule 14.11(i)(4)(C)(ii)(d) is intended to ensure that there is sufficient public information about the issuances and/or issuers of the fixed income securities held by a series of Managed Fund Shares. A Statement to Noteholders generally includes the same pieces of information about an issuer and issuance that would be included in Form 10D. Statements to Noteholders also typically include the following types of information: (1) The amount of the distribution(s) allocable to interest on the notes; (2) the amount of the distribution(s) allocable to principal of the notes; (3) the note balance, after taking into account all payments to be made on such distribution date; (4) the servicing fee paid and/or due but unpaid as of such distribution date; (5) the pool balance and required overcollateralization amount as of the close of business on the last day of the related collection period; (6) the reserve fund amount, the reserve fund required amount and the reserve fund draw amount; (7) the amount of the aggregate realized losses on the loans, if any, for the preceding collection period and the cumulative default ratio; (8) whether an amortization event will exist as of such distribution date; (9) the aggregate repurchase prices for loans, if any, that were repurchased by the seller during the related collection period; (10) the amount of fees payable to all parties pursuant to the indenture; (11) any and all other fees, expenses, indemnities or taxes payable by the issuer or the grantor trust (including reserved amounts for payments required to be made before the next distribution date); (12) the payments to the certificate holders; and (13) during a pre-funding period, the amount on deposit in the pre-funding account as of the close of business on the last day of the related collection period, and the pool balance of subsequent loans purchased during the related collection period, and following the pre-funding period, the amount of principal payments made on each class of notes from amounts on deposit in the pre-funding account.

<sup>22</sup> Rule 14.11(i)(4)(C)(ii)(a) provides that "components that in the aggregate account for at least 75% of the fixed income weight of the portfolio must each have a minimum original principal amount outstanding of \$100 million or more." The Exchange instead is proposing that the components that in the aggregate account for at least 60% of the fixed income weight of the portfolio will each have a minimum original principal outstanding of \$100 million or more.

<sup>23</sup> Rule 14.11(i)(4)(C)(ii)(e) provides that "non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio," ("20% Restriction"). The Exchange is proposing that the Fund be permitted to hold up to 40% of the weight of the fixed income portion of the portfolio in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities.

<sup>24</sup> As discussed above, the Original Approval Order provides exceptions to Rules 14.11(i)(4)(C)(ii)(d), 14.11(i)(4)(C)(iv)(b), and 14.11(i)(4)(C)(i) for the Fund.

the best interest of the Fund's shareholders because such investments have the potential to reduce the overall risk profile of the Fund's portfolio through diversification while ensuring that the policy concerns that Rule 14.11(i)(4)(C)(ii)(d) is intended to address are mitigated. As such, the Exchange states that while the Fund would not technically meet the requirements of Rule 14.11(i)(4)(C)(ii)(d), the policy concerns related to the transparency and availability of information regarding the fixed income securities held by a fund that the rule is intended to address are otherwise mitigated by the availability of Statements to Noteholders.

The Exchange represents that: (1) Except as described above, the Fund will continue to satisfy all of the continued listing obligations applicable under the Original Approval Order; (2) the continued listing standards under Rule 14.11(i) will apply to the Shares of the Fund; (3) the Fund will adhere to its stated investment objective under Normal Market Conditions; and (4) the issuer of the Fund is required to comply with Rule 10A-3 under the Act<sup>27</sup> for the initial and continued listing of the Shares. In addition, the Exchange represents that the Fund will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio (as defined in the Exchange rules) and the requirement that the Disclosed Portfolio and the net asset value will be made available to all market participants at the same time,<sup>28</sup> intraday indicative value,<sup>29</sup> suspension of trading or removal,<sup>30</sup> trading halts,<sup>31</sup> disclosure,<sup>32</sup> and firewalls.<sup>33</sup>

### III. Proceedings To Determine Whether To Approve or Disapprove SR-CboeBZX-2019-044 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>34</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal.

Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>35</sup> the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."<sup>36</sup>

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>37</sup> in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views.

If the listing rule for the Shares were amended as proposed, would the listing rule continue to ensure that a substantial portion of the Fund's portfolio consists of fixed income securities for which information is publicly available? If not, are there reasons why it may not be necessary that information be publicly available for ABS and Private MBS (as distinguished from other types of fixed income securities)?

Would the proposed increased investment in ABS and Private MBS by the Fund increase the susceptibility of the Shares to manipulation? If so, why; if not, why not? If the Fund's permitted investments were expanded to the extent proposed, would any other restrictions on the Fund's permitted investments be appropriate in order for the proposed rule change to be consistent with Section 6(b)(5) of the Act?

Would the proposal to lower the application of the requirement to have a minimum original principal amount outstanding of \$100 million from 75% to 60% of the weight of the fixed income portion of the Fund's portfolio

increase the susceptibility of the Shares to manipulation? If so, why; if not, why not?

### IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>38</sup> any request for an opportunity to make an oral presentation.<sup>39</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by September 18, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 2, 2019.

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-044 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-044. 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

<sup>38</sup> 17 CFR 240.19b-4.

<sup>39</sup> Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>27</sup> 17 CFR 240.10A-3.

<sup>28</sup> See Exchange Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

<sup>29</sup> See Exchange Rule 14.11(i)(4)(B)(i).

<sup>30</sup> See Exchange Rule 14.11(i)(4)(B)(iii).

<sup>31</sup> See Exchange Rule 14.11(i)(4)(B)(iv).

<sup>32</sup> See Exchange Rule 14.11(i)(6).

<sup>33</sup> See Exchange Rule 14.11(i)(7).

<sup>34</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>35</sup> *Id.*

<sup>36</sup> 15 U.S.C. 78f(b)(5).

<sup>37</sup> See Notice, *supra* note 3.

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 a.m. and 3 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-ChoeBZX-2019-044 and should be submitted by September 18, 2019. Rebuttal comments should be submitted by October 2, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>40</sup>

**Jill M. Peterson,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86731; File No. SR-OCC-2019-005]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Related to The Options Clearing Corporation's Vanilla Option Model and Smoothing Algorithm

August 22, 2019.

#### I. Introduction

On June 28, 2019, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2019-005 ("Proposed Rule Change") pursuant

to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder to propose changes to OCC's margin methodology regarding the estimation of prices for listed options contracts.<sup>3</sup> The Proposed Rule Change was published for public comment in the **Federal Register** on July 9, 2019,<sup>4</sup> and the Commission has received no comments regarding the Proposed Rule Change.<sup>5</sup> This order approves the Proposed Rule Change.

#### II. Background

The System for Theoretical Analysis and Numerical Simulations ("STANS") is OCC's methodology for calculating margin requirements. STANS margin requirements are driven by several components, each reflecting a different aspect of risk. Two primary components of STANS are the models that OCC uses to (1) generate theoretical values, implied volatilities, and certain risk sensitivities for plain vanilla listed options (the "Vanilla Option Model");<sup>6</sup> and (2) estimate fair prices of listed option contracts based on their bid and ask price quotes (the "Smoothing Algorithm").<sup>7</sup> The changes proposed in

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Notice of Filing *infra* note 4, at 84 FR 32821.

<sup>4</sup> Securities Exchange Act Release No. 886296 (July 3, 2019), 84 FR 32821 (July 9, 2019) (SR-OCC-2019-004) ("Notice of Filing"). OCC also filed a related advance notice (SR-OCC-2019-804) ("Advance Notice") with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled the Payment, Clearing, and Settlement Supervision Act of 2010 and Rule 19b-4(n)(1)(i) under the Exchange Act, 12 U.S.C. 5465(e)(1). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b-4, respectively. The Advance Notice was published in the **Federal Register** on July 31, 2019. Securities Exchange Act Release No. 86488 (Jul. 26, 2019), 84 FR 37373 (Jul. 31, 2019) (SR-OCC-2019-804).

<sup>5</sup> Since the proposal contained in the Proposed Rule Change was also filed as an advance notice, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or Advance Notice.

<sup>6</sup> Plain vanilla listed options are commonly understood to encompass options with standardized terms (e.g., a predetermined strike price, classification as a call vs. put) and settlement structures (e.g., American-style, European-style). As described in the Notice of Filing, the Vanilla Option Model is designed to address such options, including (1) all listed vanilla European and American options on exchange traded funds and exchange traded notes (collectively, "ETPs"), equities, equity indices, futures on equity indices, currencies or commodities, and (2) vanilla flexible exchange options ("vanilla FLEX options"). See Notice of Filing, 84 FR at 32817, n.7. As of the time of filing, plain vanilla options accounted for approximately 95 percent of the total contracts cleared by OCC. See *id.*

<sup>7</sup> OCC uses the Smoothing Algorithm to estimate prices on all plain vanilla listed options included in the Vanilla Option Model, as well as options on non-equity securities (e.g., the Choe Volatility Index). See Notice of Filing, 84 FR at 32817.

the Proposed Rule Change are designed to address five limitations of the current Vanilla Option Model and five limitations of the current Smoothing Algorithm.

#### A. Vanilla Option Model

OCC relies on the Vanilla Option Model to generate theoretical values, implied volatilities, and risk sensitivities for plain vanilla listed options. The theoretical values that OCC generates with the Vanilla Option Model are the estimated values (as opposed to current market prices) derived from algorithms that use a series of predetermined inputs.<sup>8</sup> Given the current market price of a plain vanilla option, OCC uses such algorithms to estimate the implied volatility of the option.<sup>9</sup> OCC uses the risk sensitivities that it calculates to measure potential changes in an option's price in relation to the asset underlying the option.<sup>10</sup> As discussed below, OCC proposes five changes to the Vanilla Option Model.

##### (1) Interest Rates

The Vanilla Option Model currently assumes that interest rates remain constant over time. OCC proposes to revise the Vanilla Option Model to account for changes in interest rates over the life of an option. To model such interest rate changes, OCC would rely on an interest rate curve based on LIBOR, Eurodollar futures, and swap rates.

##### (2) Dividends

The Vanilla Option Model currently assumes constant dividends such that future dividends would be based on an issuer's last paid or announced dividend. OCC has acknowledged, however, that prior dividends are not always an accurate predictor of future dividends.<sup>11</sup> OCC proposes to use dividend forecasts obtained from a third-party service provider as an input to the Vanilla Option Model instead of relying on the issuer's last paid or announced dividend.

<sup>8</sup> For example, OCC generates theoretical values for American style options using a modified Jarrow-Rudd ("JR") binomial tree.

<sup>9</sup> The implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the current option premium in the market.

<sup>10</sup> OCC uses the Vanilla Option Model to calculate Delta, Gamma, and Vega. Delta measures the change in the price of an option with respect to a change in the price of an underlying asset. Gamma measures the change in Delta in response to a 1 percent change in the price of the underlying asset. Vega measures the change in the price of an option corresponding to a 1 percent change in the underlying asset's volatility.

<sup>11</sup> See Notice of Filing, 84 FR at 32818.

<sup>40</sup> 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).