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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86724; File No. SR-CboeBZX-2019-075]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 14.11(i) Relating to Generic Listing Standards for Managed Fund Shares**

August 21, 2019.

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> notice is hereby given that on August 7, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act and Rule 19b-4(f)(6) thereunder.<sup>3</sup> On August 20, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii); 17 CFR 240.19b-4(f)(6).

<sup>4</sup> In Amendment No. 1, the Exchange amended Item 2(a) of the proposed rule change to state that “The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on August 7, 2019.”

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

The Exchange proposes a rule change to Rule 14.11(i), (“Managed Fund Shares”) specifically relating to generic listing standards for Managed Fund Shares applicable to holdings in fixed income securities.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

1. Purpose

Rule 14.11(i), Managed Fund Shares, sets forth generic listing standards for listing and trading of Managed Fund Shares on the Exchange.<sup>5</sup> The Exchange specifically proposes to

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<sup>5</sup> The Commission approved Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100).

amend Rule 14.11(i)(4)(C)(ii)(e), as described below in a manner substantively identical to a proposal that has already been approved by the Commission.<sup>6</sup>

Proposed Amendment to Rule 14.11(i)(4)(C)(ii)(e)

Exchange Rule 14.11(i)(4)(C)(ii) sets forth generic listing standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares.<sup>7</sup> Exchange Rule 14.11(i)(4)(C)(ii)(e) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities (“ABS” and, collectively, “non-agency ABS”) 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. The Exchange proposes to amend Rule 14.11(i)(4)(C)(ii)(e) by deleting the words “fixed income portion” to provide that such 20% limitation would apply to the entire portfolio rather than to only the fixed income portion of the portfolio. Thus, Rule 14.11(i)(4)(C)(ii)(e) would provide that non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

The Exchange believes this amendment is appropriate because the investment of a series of Managed Fund Shares in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such

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<sup>6</sup> See Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR-NYSEArca-2019-06) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Certain Generic Listing Standards for Managed Fund Shares Applicable to Holdings of Fixed Income Securities) (the “Prior Approval”).

<sup>7</sup> Rule 14.11(i)(4)(C)(ii) provides that fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

investments may be less correlated to interest rates than many other fixed income securities. The Exchange notes that application of the 20% limitation only to the fixed income portion of a fund's portfolio may impose a much more restrictive percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. For example, a fund holding 100% of its assets in fixed income securities can hold 20% of its entire portfolio's weight in non-agency ABS. In contrast, a fund holding 25% of its assets in fixed income securities, 25% in U.S. Component Stocks, and 50% in cash and cash equivalents is limited to a 5% ( $25\% * 20\% = 5\%$ ) allocation to non-agency ABS. The Exchange, therefore, believes application of the 20% limitation to a fund's entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-agency, non-GSE and other privately issued ABS and mortgage-backed securities ("MBS").<sup>8</sup> In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed 20% of the total assets of the fund, rather than the weight of the

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<sup>8</sup> See, e.g., Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR-NASDAQ-2017-039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR-NYSEArca-2015-111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately- issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR-NYSEArca-2014-107) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR-NYSEArca-2014-134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MBS and other ABS, without any limit on the type of such MBS and ABS).

fixed income portion of the fund's portfolio.<sup>9</sup> Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Rule 14.11(i)(4)(C)(ii)(e) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Exchange Rule 14.11(i)(4)(C)(ii).

The Exchange believes the proposed amendments will provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for issues permitted to list and trade on the Exchange pursuant to Rule 19b-4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>9</sup> See Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR-NYSEArca-2018-15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600-E).

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that the Exchange or Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Rule 14.11(i)(4)(C)(ii)(e), the Exchange believes this amendment is appropriate because a fund’s investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. As noted above, application of the 20% limitation to only the fixed income portion of a fund’s portfolio may impose a much lower percentage limit on permitted holdings of non-agency ABS for funds that have a more diversified investment portfolio than for funds that hold principally or exclusively fixed income securities. The Exchange, therefore, believes application of the 20% limitation to a fund’s entire portfolio would be more equitable for Managed Fund Shares issuers with different investment objectives and holdings.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-agency, non-GSE and other privately issued ABS and MBS.<sup>12</sup> In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.<sup>13</sup> Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio in Exchange Rule 14.11(i)(4)(C)(ii)(e) to a fund's total assets. Non-agency ABS would otherwise satisfy all generic listing requirements of Exchange Rule 14.11(i)(4)(C)(ii).

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

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

In accordance with Section 6(b)(8) of the Act,<sup>14</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change would permit Exchange listing and trading under Rule 19b-4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

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<sup>12</sup> See note 8, *supra*.

<sup>13</sup> See note 9, *supra*.

<sup>14</sup> 15 U.S.C. 78f(b)(8).

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

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

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing, which would allow the Exchange to immediately apply the proposed rule to Managed Fund Shares generically-listed on the Exchange. The Exchange also noted that the Commission has previously approved a substantively identical proposal by another national securities exchange.<sup>19</sup> The Commission believes that waiving the 30-day operative delay is consistent with the

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> See supra note 6.

protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change, as modified by Amendment No. 1, operative upon filing.<sup>20</sup>

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-075 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.

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<sup>20</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-CboeBZX-2019-075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-075 and should be submitted on or before **[INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER]**.

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

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 200.30-3(a)(12).

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