



**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-87059; File No. SR- CboeBZX-2019-057]**

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF Under Currently Proposed Rule 14.11(k)**

September 23, 2019

On June 6, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF (each a “Fund” and, collectively, the “Funds”) under proposed BZX Rule 14.11(k).<sup>3</sup> The proposed rule change was published for comment in the Federal Register on June 25, 2019.<sup>4</sup> On August 2, 2019, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> the Commission designated a longer period within which to approve the

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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> See Securities Exchange Act Release No. 86157 (June 19, 2019), 84 FR 29892 (June 25, 2019) (“Managed Portfolio Shares Proposal”). Pursuant to the Managed Portfolio Shares Proposal, the Exchange proposes to adopt new BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares. The Managed Portfolio Shares Proposal has not yet been acted upon by the Commission.

<sup>4</sup> See Securities Exchange Act Release No. 86155 (June 19, 2019), 84 FR 29912 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> The Commission has received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>7</sup> to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Exchange’s Description of the Proposed Rule Change<sup>8</sup>

The Exchange proposes to list and trade shares of the Funds under proposed BZX Rule 14.11(k).<sup>9</sup> The shares of each Fund will be issued by American Century ETF Trust (“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.<sup>10</sup> The investment adviser to the Trust will be American Century Investment Management, Inc. (“Adviser”).<sup>11</sup> Foreside Fund Services, LLC will serve as the distributor of each Fund’s shares.

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<sup>6</sup> See Securities Exchange Act Release No. 86557, 84 FR 39024 (August 8, 2019). The Commission designated September 23, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>7</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> For a complete description of the Exchange’s proposal, see the Notice, *supra* note 4.

<sup>9</sup> For a complete description of proposed BZX Rule 14.11(k), see the Managed Portfolio Shares Proposal, *supra* note 3.

<sup>10</sup> The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On June 18, 2018, the Trust filed a registration statement on Form N-1A relating to the Funds (File No. 811-23305). The Exchange states that the Trust filed an application for exemptive relief under the 1940 Act (File No. 812-15035), and shares of the Funds will not be issued until the Commission has issued an order granting exemptive relief.

<sup>11</sup> The Exchange states that the 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 of and/or changes to a Fund’s portfolio. The Exchange further states that in the event (a) the 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 and maintain a fire wall with respect to

#### A. American Century Focused Dynamic Growth ETF

The Exchange states that the American Century Focused Dynamic Growth ETF seeks long-term capital growth. Under Normal Market Conditions,<sup>12</sup> the Fund intends to invest primarily in U.S. exchange-listed equity securities. In addition, the Fund may invest in exchange-traded funds (“ETFs”),<sup>13</sup> exchange-listed American Depositary Receipts (“ADRs”), U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents<sup>14</sup> without limitation.

#### B. American Century Focused Large Cap Value ETF

The Exchange states that the American Century Focused Large Cap Value ETF will seek

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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.

<sup>12</sup> 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.

<sup>13</sup> For purposes of describing the holdings of the Funds, ETFs include Portfolio Depository Receipts (as described in BZX Rule 14.11(b)); Index Fund Shares (as described in BZX Rule 14.11(c)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs in which a Fund will invest all will be listed and traded on U.S. 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.

<sup>14</sup> For purposes of this filing, “Cash Equivalents” are short-term instruments with maturities of less than three months, which include only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

long-term capital growth. Under Normal Market Conditions, the Fund intends to invest primarily in U.S. exchange-listed equity securities. In addition, the Fund may invest in ETFs, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents without limitation.

### C. Investment Restrictions

All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges. The Funds will not invest in forwards or swaps.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Each Fund may hold up to an aggregate amount of 15% of its total assets in illiquid assets,<sup>15</sup> 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. 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. In any event, the Funds will not purchase any securities that are illiquid investments at the time of purchase.

The shares of each Fund will conform to the initial and continued listing criteria under proposed BZX Rule 14.11(k). The Exchange states that each Fund's holdings will also meet the

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<sup>15</sup> 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).

generic listing standards applicable to series of Managed Fund Shares under BZX Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Managed Portfolio Shares, the Exchange believes that the overarching policy issues related to liquidity, market capitalization, diversity, and concentration of portfolio holdings that BZX Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Managed Portfolio Shares.

II. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2019-057 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>16</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. 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 Exchange Act,<sup>17</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 proposed rule change's consistency with Section 6(b)(5) of the Exchange 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, ...to remove impediments to and

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<sup>16</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>17</sup> Id.

perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.”<sup>18</sup>

### III. 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 proposal is consistent with Section 6(b)(5) or any other provision of the Exchange 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, any request for an opportunity to make an oral presentation.<sup>19</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by [insert date 35 days from publication in the Federal Register].

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>20</sup> and any other issues

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<sup>18</sup> 15 U.S.C. 78f(b)(5).

<sup>19</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Pub. L. 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>20</sup> See supra note 4.

raised by the proposed rule change under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Funds under proposed Rule 14.11(k) (Managed Portfolio Shares), which would be actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately 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, and is consistent with the maintenance of a fair and orderly market under the Exchange 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-2019-057 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-2019-057. 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-057 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from date of 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)(57).

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