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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87951; File No. SR- CboeBZX-2019-076]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of the Clearbridge Small Cap Value ETF under BZX Rule 14.11(k)

January 13, 2020.

On September 26, 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 (“Shares”) of the Clearbridge Small Cap Value ETF (“Fund”) under BZX Rule 14.11(k) (Managed Portfolio Shares). On October 9, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, was published for comment in the Federal Register on October 17, 2019.<sup>3</sup> On November 21, 2019, pursuant to Section 19(b)(2) of the Exchange Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> The Commission has

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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. 87286 (October 10, 2019), 84 FR 55608 (“Notice”).

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

<sup>5</sup> See Securities Exchange Act Release No. 87581, 84 FR 65434 (November 27, 2019). The Commission designated January 15, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

I. Summary of the Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 1<sup>7</sup>

The Exchange proposes to list and trade Shares of the Fund under BZX Rule 14.11(k).<sup>8</sup> The Shares 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.<sup>9</sup> The investment adviser to the Trust will be Precidian Funds LLC (“Adviser”) and the sub-adviser to the Fund will be ClearBridge Investments, LLC (“Sub-Adviser”).<sup>10</sup> Legg Mason Investor Services, LLC will serve as the distributor of the Shares.

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

<sup>7</sup> For a complete description of the Exchange’s proposal, see the Notice, supra note 3.

<sup>8</sup> The Commission recently approved the Exchange’s proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares. See Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR-CboeBZX-2019-047).

<sup>9</sup> According to the Exchange, the Trust is registered under the Investment Company Act of 1940 (“1940 Act”) and plans to file a registration statement on Form N-1A relating to the Fund. An order granting exemptive relief to the Trust was issued on May 20, 2019 (File No. 812-14405) (“Exemptive Order”). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Exemptive Order.

<sup>10</sup> The Exchange states that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange states that 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 of and/or changes to the Fund’s portfolio and Creation Basket (as such term is defined in BZX Rule 14.11(k). The Exchange further states that 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 and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the portfolio and

#### A. Description of the Fund

The Exchange states that the Fund seeks long-term capital growth. The Exchange states that Fund's holdings will be limited to and consistent with what is permissible under the Exemptive Order and described in the Notice. Under Normal Market Conditions,<sup>11</sup> the Fund will invest at least 80% of its net assets, plus borrowings for investment purposes, in U.S. exchange-listed common stocks and other equity securities of small capitalization U.S. companies or in other U.S. exchange-listed investments with similar economic characteristics, including only the following U.S. exchange-listed securities: common stocks, preferred securities, securities of other investment companies and of real estate investment companies ("REITs"), and warrants and rights.

In addition, the Fund may also invest up to 20% of its net assets, plus borrowings for investment purposes, in common stocks, preferred securities, and warrants and rights of U.S. exchange-listed companies with larger market capitalizations, U.S. ETFs,<sup>12</sup> U.S. 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 without limitation.

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the Creation Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or Creation Basket.

<sup>11</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>12</sup> For purposes of describing the holdings of the Fund, 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 the Fund may invest all will be listed and traded on U.S. national securities exchanges. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

## B. Investment Restrictions

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets. Illiquid securities and other illiquid assets include those subject to contractual or other restrictions on resale and other instruments or assets that lack readily available markets as determined in accordance with Commission staff guidance. The Exchange states that the 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. In any event, the Fund will not purchase any securities that are illiquid investments at the time of purchase.

The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(k). The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

The Exchange states that the Fund's holdings will also meet the 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-2019-076 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>13</sup> to determine whether the proposed rule change, as modified by Amendment No. 1, 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>14</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 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>15</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

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<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> Id.

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

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>16</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>17</sup> and any other issues 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 Fund under BZX Rule 14.11(k) (Managed Portfolio Shares), which are actively managed exchange-traded products for which the portfolio holdings are 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.

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<sup>16</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>17</sup> See supra note 3.

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-2019-076 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-2019-076. 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-2019-076 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>18</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(57).

[FR Doc. 2020-00683 Filed: 1/16/2020 8:45 am; Publication Date: 1/17/2020]