

Required fields are shown with yellow backgrounds and asterisks.

| | | | | | |
|---|--|--|--|---|--|
| Page 1 of * 66 | | SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4 | | File No. * SR 2024 - * 112 Amendment No. (req. for Amendments *) 1 | |
| Filing by Cboe BZX Exchange, Inc. Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 | | | | | |
| Initial * <input type="checkbox"/> | | Amendment * <input checked="" type="checkbox"/> | | Withdrawal <input type="checkbox"/> | |
| Pilot <input type="checkbox"/> | | Extension of Time Period for Commission Action * <input type="checkbox"/> | | Date Expires * <input type="text"/> | |
| | | Section 19(b)(2) * <input checked="" type="checkbox"/> | | Section 19(b)(3)(A) * <input type="checkbox"/> | |
| | | | | Section 19(b)(3)(B) * <input type="checkbox"/> | |
| | | | | Rule | |
| | | <input type="checkbox"/> 19b-4(f)(1) | | <input type="checkbox"/> 19b-4(f)(4) | |
| | | <input type="checkbox"/> 19b-4(f)(2) | | <input type="checkbox"/> 19b-4(f)(5) | |
| | | <input type="checkbox"/> 19b-4(f)(3) | | <input type="checkbox"/> 19b-4(f)(6) | |
| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> | | | Section 806(e)(2) * <input type="checkbox"/> | | |
| | | | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/> | | |
| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | | | Exhibit 3 Sent As Paper Document <input type="checkbox"/> | | |
| Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div></div> | | | | | |
| Contact Information Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action. First Name * Sarah Last Name * Tadtman Title * Senior Counsel E-mail * stadtmann@cboe.com Telephone * (913) 815-7203 Fax <input type="text"/> | | | | | |
| Signature Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 03/11/2025 (Title *) By Kyle Murray VP, Associate General Counsel (Name *) NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed. <div><div>Kyle Murray</div><div>Date: 2025.03.11 09:15:59 -05'00'</div></div> | | | | | |

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

Add Remove View

24-112 19b-4 (Multi-Share Class ETF

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

24-112 Exhibit 1 (Multi-Share Class E

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

24-112 Exhibit 5 (Multi-Share Class E

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 (“Exchange Act” or the “Act”),¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to adopt Rule 14.11(n) to permit the generic listing and trading of Multi-Class Exchange-Traded Fund (“ETF”) Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”) and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act of 1940 and the rules and regulations thereunder that permit the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded. The Exchange is also proposing to make conforming changes to the Exchange’s definitions, corporate governance requirements under Rule 14.10(e), and other provisions of Rule 14.11 in order to accommodate the proposed listing of Multi-Class ETF Shares.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on November 7, 2024.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, 913-815-7203, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 1 to SR-CboeBZX-2024-112 amends and replaces in its entirety the proposal as originally submitted on November 8, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to adopt new Rule 14.11(n) for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Multi-Class Exchange-Traded Fund (“ETF”) Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”), and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permit the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund.³ The Exchange is also proposing to make conforming changes to the Exchange’s definitions, corporate

³ The Exchange notes that it had previously submitted a version of this filing on April 15, 2024. See Securities Exchange Act Release No. 34-100034 (May 1, 2024) 89 FR 35255. That filing was withdrawn on November 8, 2024 and submitted this proposal.

governance requirements under Rule 14.10(e), and other provisions of Rule 14.11 in order to accommodate the proposed listing of Multi-Class ETF Shares.

Consistent with Index Fund Shares, Managed Fund Shares, and ETF Shares listed under the generic listing standards in Rule 14.11(c), 14.11(i), and 14.11(l), respectively, series of Multi-Class ETF Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act, and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permit the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.⁴

Background

There are numerous applications for exemptive relief for Multi-Class ETF Shares currently before the Commission⁵ that request exemptive relief similar to that previously

⁴ Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 14.11(n), the Exchange proposes new Rule 14.11(n) to establish generic listing standards for Multi-Class ETFs that are permitted to operate in reliance on exemptive relief to Rule 6c-11 under the Investment Company Act that permits the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund. A Multi-Class ETF listed under proposed Rule 14.11(n) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

⁵ See Perpetual US Services, LLC (filed February 7, 2023); DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc. (filed July 12, 2023); F/m Investments LLC (August 22, 2023); Fidelity Hastings Street Trust and Fidelity Management & Research Company (filed October 24, 2023); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment

granted to other funds that are not listed on the Exchange.⁶ This proposal would provide for the “generic” listing and/or trading of Multi-Class ETF Shares under proposed Rule 14.11(n) on the Exchange immediately upon the Commission’s applicable order granting exemptive relief to the outstanding applications. The Exchange submits this proposal only to prevent any unnecessary delay in listing additional Multi-Class ETF Shares generically under Rule 14.11(n) when and if such requests are granted by the Commission.

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) to offer certain index-based open-end management investment companies with Multi-Class ETF Shares.⁷ After this relief was granted, there was limited public discourse about Multi-Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Multi-Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).⁸ The ETF Rule permits ETFs that satisfy certain conditions to operate without the

Management Inc. (filed January 29, 2024); First Trust Series Fund and First Trust Variable Insurance Trust (filed January 24, 2024); Guinness Atkinson Funds (filed February 27, 2024); and Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (filed March 20, 2024).

⁶ Infra note 6.

⁷ See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

⁸ See Securities Exchange Act Release No. 33-10695 (October 24, 2019) 84 FR 57162 (the “ETF Rule Adopting Release”).

expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Multi-Class ETF Shares as part of the final rule. Instead, the Commission concluded that Multi-Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 14.11(l)⁹ shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission and because none of the Multi-Class ETF Shares that were previously granted exemptive relief listed on the Exchange, did not propose to include any language comparable to what is being proposed herein.

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Multi-Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Multi-Class ETF Shares, i.e., both a class of mutual fund shares (each such class, a “Mutual Fund class” and such shares “Mutual Fund Shares”) and ETF Shares, could be beneficial to the fund and to shareholders of each type of class for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁰

⁹ See Securities Exchange Act No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares).

¹⁰ Specifically, the Applicants believe that a Mutual Fund class would benefit ETF class shareholders because investor cash flows through a Mutual Fund class can be used for efficient portfolio rebalancing. To the extent that cash flows come into a fund through a Mutual Fund class, a portfolio manager may be able to deploy that cash strategically to rebalance the portfolio. Second, cash flows through a Mutual Fund class may allow for greater creation basket flexibility

While Multi-Class ETF Shares could potentially be listed under existing Exchange Rules 14.11(c) or 14.11(i), doing so would unnecessarily re-introduce the burdensome quantitative portfolio requirements and ongoing compliance obligations associated therewith that existed before the adoption of Rule 6c-11 and Exchange Rule 14.11(l).¹¹ The Exchange is not aware of any clear policy rationale as to why those quantitative requirements should apply to Multi-Class ETF Shares other than the rules are already in place. As such, listing Multi-Class ETF Shares under these older rules would place undue burdens on both the Exchange and fund issuers because of the quantitative portfolio requirements that currently do not apply to ETFs meeting the requirements of Rule 6c-11 and Rule 14.11(l). Furthermore, while the Applicants generally seek the same

for creations and redemptions through the ETF class, which could promote arbitrage efficiency and smaller spreads on the trading of ETF Shares in the secondary market. With respect to existing funds, ETF classes would permit investors that prefer the ETF structure to gain access to established funds' investment strategies. Additionally, the establishment of an ETF class as part of an existing fund could lead to cost efficiencies. Specifically, in terms of fund expenses, an ETF class could have initial and ongoing advantages for its shareholders, where shareholders of an ETF class of a fund that already has substantial assets could immediately benefit from economies of scale. Finally, the tax-free conversion of shares from the Mutual Fund class to the ETF class may accelerate the development of an ETF shareholder base. Subsequent secondary market transactions by the ETF class shareholders could generate greater trading volume, resulting in lower trading spreads and/or premiums or discounts in the market prices of the ETF Shares to the benefit of ETF shareholders. The Applicants also believe that an ETF class would benefit Mutual Fund class shareholders because in-kind transactions through the ETF class may contribute to lower portfolio transaction costs and greater tax efficiency. Additionally, the conversion feature could allow Mutual Fund shareholders to convert Mutual Fund Shares for ETF Shares without adverse consequences to the Fund by allowing Mutual Fund shareholders to convert their shares into the ETF class of the same fund rather than redeeming their Mutual Fund Shares and buying shares of another ETF. In doing so, the converting shareholder could save on transaction costs and potential tax consequences that may otherwise be incurred in redeeming their existing shares and buying separate ETF Shares. The ETF class would also represent an additional distribution channel for a fund that could lead to additional asset growth and economies of scale; greater assets under management may lead to additional cost efficiencies and an improved tax profile for the fund may also assist the competitive position of the Fund for attracting prospective shareholders. Last, the class of ETF Shares could allow certain investors to engage in more frequent trading without disrupting the fund's portfolio.

¹¹ See e.g., Exchange Rule 14.11(c) and 14.11(i).

exemptive relief as granted under those previous orders,¹² several Applicants have proposed different conditions to the relief that reflect the adoption of Rule 6c-11.

Therefore, the Exchange believes there is a reasonable relationship between the Applications and the proposed rule change to allow for the Commission's evaluation of whether the proposed rule change is consistent with the Act. The Exchange also acknowledges that approval of this proposed rule change would not necessarily result in the listing and trading of the additional Multi-Class ETF Shares under the proposed Rule until and unless the necessary relief was granted by the Division of Investment Management, but approving this proposal would address any potential concerns the Commission's division of Trading and Markets might have as it specifically relates to the listing and trading of Multi-Class ETF Shares under proposed Rule 14.11(n) and would allow for a smooth launch process if and when such relief is granted.¹³

Proposal

¹² Supra note 6.

¹³ The Commission has in some instances historically approved Exchange listing rules even when no products would necessarily be permitted to list under those rules. Most recently, the Commission approved Exchange proposals to list and trade shares of ether-based exchange-traded products ("ETPs") prior to any such products having an effective registration statement. As those ether-based ETPs could not trade on the Exchange without an effective registration statement, which were separately considered by the Commission's division of corporate finance, the Exchange could not list and trade those products even with proper Exchange Rules in place. The Exchange believes this example illustrates the reasonability of the Exchange pursuing the adoption a proposed Rule that would not immediately result in the listing and trading of the applicable products thereunder. See Securities Exchange Act No. 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

Proposed Rule 14.11(n)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Multi-Class ETF Shares that meet the criteria of this Rule 14.11(n).¹⁴

Proposed Rule 14.11(n)(2) provides that the proposed rule would be applicable only to Multi-Class ETF Shares. Except to the extent inconsistent with this Rule 14.11(n), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Multi-Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(n)(2) further provides that: (A) transactions in Multi-Class ETF Shares will occur throughout the Exchange’s trading hours; and (B) the Exchange will implement and maintain written surveillance procedures for Multi-Class ETF Shares.

Proposed Rule 14.11(n)(3)(A) provides that the term “Multi-Class ETF Shares” shall mean shares of stock issued by a Multi-Class ETF.

Proposed Rule 14.11(n)(3)(B) provides that the term “Multi-Class ETF” means a fund that is subject to the same relief and constraints as exchange-traded funds under Rule 6c-11 under the Investment Company except that the security is issued by a trust

¹⁴ To the extent that a series of Multi-Class ETF Shares does not satisfy one or more of the criteria in proposed Rule 14.11(n), the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such series on the Exchange. Consistent with Rule 14.11(a), any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such series of Multi-Class ETF Shares shall constitute continued listing requirements for the series of Multi-Class ETF Shares. Further, in the event that a series of Multi-Class ETF Shares becomes listed under proposed Rule 14.11(n) and subsequently can no longer rely on the applicable exemptive relief to Rule 6c-11, such series of Multi-Class ETF Shares may be listed as a series of Index Fund Shares under Rule 14.11(c) or Managed Fund Shares under Rule 14.11(i), as applicable, as long as the series of Multi-Class ETF Shares meets all listing requirements applicable under the applicable rule.

that issues Multi-Class ETF Shares in addition to classes of shares of an open-end fund that are not exchange-traded.

Proposed Rule 14.11(n)(3)(C) provides that the term “Reporting Authority” in respect of a particular series of Multi-Class ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Multi-Class ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Multi-Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required in connection with issuance of Multi-Class ETF Shares, or other information relating to the issuance, redemption or trading of Multi-Class ETF Shares. A series of Multi-Class ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(n)(4) provides that the Exchange may approve a series of Multi-Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of Multi-Class ETF Shares complies with the requirements of Rule 6c-11 under the Investment Company Act, and is eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permits the fund to offer Multi-Class ETF Shares, and must satisfy the requirements of this Rule 14.11(n) on an initial and continued listing basis.

Proposed Rule 14.11(n)(4)(A) provides that the requirements of paragraph (4) of this Rule must be satisfied by a series of Multi-Class ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis. Further, proposed Rule 14.11(n)(4)(A) provides that: (i) for each series, the Exchange will establish a minimum number of Multi-Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) if an index underlying a series of Multi-Class ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of Multi-Class ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class ETF’s portfolio; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of Multi-Class ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Multi-Class ETFs, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer in compliance with the requirements of Rule 6c-11 under the Investment Company Act or of the applicable exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(n)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited in connection with issuance of Multi-Class ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of

Multi-Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Multi-Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

The Exchange is also proposing to make corresponding amendments to include Multi-Class ETF Shares in other Exchange rules. First, the Exchange is proposing to add Multi-Class ETF Shares to the definition of UTP Security in Rule 1.5(ee) and to amend Rule 14.11(c)(3)(A)(i)(a) in order to include Multi-Class ETF Shares in the definition of Derivative Securities Products.

Second, the Exchange proposes to amend Rule 14.10(e)(1)(E)(ii) to exempt Multi-Class ETF Shares from the requirements of Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act and does not otherwise require shareholder approval under the Investment Company Act and the rules thereunder or any other Exchange rule.¹⁵

¹⁵ The Exchange notes that these proposed changes would subject Multi-Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

Third, the Exchange proposes to amend Rule 14.10(e)(1)(F)(ii) to include Multi-Class ETF Shares in the definition of “Derivative Securities” for purposes of Rule 14.10. Inclusion in such definition would exempt Multi-Class ETF Shares from the requirements relating to Independent Directors (as set forth in Rule 14.10(c)(2)), Compensation Committees (as set forth in Rule 14.10(c)(4)), Director Nominations (as set forth in Rule 14.10(c)(5)), Code of Conduct (as set forth in Rule 14.10(d)), and Meetings of Shareholders (as set forth in Rule 14.10(f)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 14.10(c)(3)), except for the applicable requirements of SEC Rule 10A-3.¹⁶

Discussion

Proposed Rule 14.11(n) is based in large part on Rules 14.11(c), (i), and (l) related to the listing and trading of Index Fund Shares, Managed Fund Shares, and ETF Shares on the Exchange, respectively, each of which are issued under the 1940 Act and qualify as ETF Shares under Rule 6c-11. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. ETF Shares are identical to Multi-Class ETF Shares except that Multi-Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes that using Rules 14.11(c) and (i) (collectively, the “Current Multi-Class ETF Standards”) as well as Rule 14.11(l) as the basis for proposed Rule 14.11(n) is appropriate because they are generally designed to address the issues associated with

¹⁶ Id.

Multi-Class ETF Shares. The only substantial difference between Rule 14.11(l) and proposed Rule 14.11(n) from the Current ETF Standards that are not otherwise required under Rule 6c-11 is that proposed Rule 14.11(n) and Rule 14.11(l) do not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards. This difference is discussed below.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Multi-Class ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11, the Investment Company Act, and any applicable exemptive relief on an ongoing basis. While proposed Rule 14.11(n) does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),¹⁷ the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(n)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(n)(4)(B)(i). The Exchange will also halt trading in Multi-Class ETF Shares under the conditions specified in Rule 11.18, "Trading Halts Due to Extraordinary Market Volatility." The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11, specifically the additional flexibility

¹⁷ The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the "Holdings Standards") as well as related to the minimum number of beneficial holders of a fund (the "Distribution Standards"). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

provided to issuers of Multi-Class ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.¹⁸ The Exchange believes that the combination of these factors will act to keep Multi-Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Multi-Class ETF Shares on the Exchange without the inclusion of quantitative standards.¹⁹ The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met.²⁰ Specifically, the Exchange will review the website of each series of Multi-Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) would require an issuer of Multi-Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

¹⁸ The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Rule 6c-11 Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

¹⁹ The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of Multi-Class ETF Shares or the distribution of the Multi-Class ETF Shares.

²⁰ As noted throughout, proposed Rule 14.11(n), unlike Rule 14.11(c) and 14.11(i), does not include Holdings Standards and, as such, there will be no quantitative standards applicable by the Exchange to the portfolio holdings of a series of Multi-Class ETF Shares on an initial or continued listing basis.

The Exchange may suspend trading in and commence delisting proceedings for a series of Multi-Class ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²¹ The Exchange also notes that Rule 14.11(a) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 14.11(n), which would include any failure of the issuer to comply with Rule 6c-11, the Investment Company Act, or any exemptive relief applicable to Multi-Class ETF Shares.²²

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Multi-Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to ETF Shares, Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in

²¹ Specifically, proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 or any applicable exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

²² The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 14.11(a) would itself be considered non-compliance with the requirements of Rule 14.11 and would subject the series of Multi-Class ETF Shares to potential trading halts and the delisting process under Rule 14.12.

Multi-Class ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Multi-Class ETF Shares reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). FINRA also can access data obtained from the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Multi-Class ETF Shares, to the extent that a series of Multi-Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of Multi-Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Multi-Class ETF Shares, as provided under Rule 14.10(e)(1)(E).²³

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Multi-Class ETF Shares. Trading may

²³ The Exchange notes that these proposed changes would subject ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

be halted if the circuit breaker parameters in Rule 11.18 have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Multi-Class ETF Shares that is required to be disclosed under Rule 6c-11 of the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to a series of Multi-Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the daily portfolio disclosure is available to all market participants;²⁴ (2) if an interruption to the dissemination to the value of the index or reference asset on which a series of Multi-Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the

²⁴ The Exchange will obtain a representation from the issuer of Multi-Class ETF Shares that the net asset value per share will be calculated daily and the requirements under 6c-11 will be satisfied for the series will be calculated daily and made available to all market participants at the same time.

²⁵ 15 U.S.C. 78f(b).

proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed Rule 14.11(n) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Multi-Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(n)(4) sets forth initial and continued listing criteria applicable to Multi-Class ETF Shares, specifically providing that the Exchange may approve a series of Multi-Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of Multi-Class ETF Shares complies with the requirements of Rule 6c-11 under the Investment Company Act, and is eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ Id.

that permits the fund to offer Multi-Class ETF Shares, and must satisfy the requirements of this Rule 14.11(n) on an initial and continued listing basis.²⁸ The Exchange will submit a Form 19b-4(e) for all series of Multi-Class ETF Shares upon being listed pursuant to Rule 14.11(n) and such Form 19b-4(e) will specifically note that such series of Multi-Class ETF Shares are being listed on the Exchange pursuant to Rule 14.11(n).

Proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer in compliance with the requirements of Rule 6c-11 under the Investment Company Act of 1940 or the exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or

²⁸ The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief thereunder does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 14.11(n). To this point, an investment company that operates in reliance of exemptive relief providing for Multi-Class ETF Shares could also be listed as a series of Index Fund Shares or Managed Fund Shares pursuant to Rule 14.11(c) or 14.11(i), respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that a series of Multi-Class ETF Shares listed on the Exchange preferred to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), nothing would preclude such a series from changing to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), as long as the series met each of the initial and continued listing obligations under the applicable rules.

more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange notes that it may become aware that the issuer is no longer compliant with Rule 6c-11 or any applicable exemptive relief thereunder, as described in proposed Rule 14.11(n)(4)(B)(i)(a), as a result of either the Exchange identifying non-compliance through its own monitoring process or through notification by the issuer. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing. The Exchange also notes that it will obtain a representation from the issuer of each series of Multi-Class ETF Shares stating that the requirements of Rule 6c-11 will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 14.11(n) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.11(n)(2)(C) along with the similarities of proposed Rule 14.11(n) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Multi-Class ETF Shares. Proposed Rule 14.11(n) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as Multi-Class ETF Shares. Rules 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an

index. ETF Shares are identical to Multi-Class ETF Shares except that Multi-Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes that using the Current ETF Standards and Rule 14.11(l) as the basis for proposed Rule 14.11(n) is appropriate because they are generally designed to address the issues associated with Multi-Class ETF Shares. The only substantial difference between proposed Rule 14.11(n) and the Current ETF Standards that are not otherwise required under Rule 6c-11 is that proposed Rule 14.11(n) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act²⁹ in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 14.11(n) by performing ongoing surveillance of Multi-Class ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(n) does not include the quantitative requirements applicable to a fund and a fund's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),³⁰ the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(n)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting

²⁹ 15 U.S.C. 78f(b)(1).

³⁰ The Exchange notes that Rules 14.11(c) and (i) include certain Holdings Standards and Distribution Standards. The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

proceedings under proposed Rule 14.11(n)(4)(B)(i). The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided to issuers of Multi-Class ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.³¹ The Exchange believes that the combination of these factors will act to keep Multi-Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Multi-Class ETF Shares on the Exchange without the inclusion of quantitative standards.³² The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of Multi-Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) would require an issuer of Multi-Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

³¹ The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Rule 6c-11 Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

³² The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of Multi-Class ETF Shares or the distribution of the Multi-Class ETF Shares.

To the extent that any of the requirements under Rule 6c-11 or the 1940 Act are not being met, the Exchange may halt trading in a series of Multi-Class ETF Shares as provided in proposed Rule 14.11(n)(4)(B)(ii). Further, the Exchange may also suspend trading in and commence delisting proceedings for a series of Multi-Class ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.³³ The Exchange also notes that Rule 14.11(a) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 14.11(n), which would include any failure of the issuer to comply with Rule 6c-11 or the 1940 Act.³⁴

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Multi-Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are

³³ Specifically, proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 or any exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

³⁴ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 14.11(a) would itself be considered non-compliance with the requirements of Rule 14.11 and would subject the series of Multi-Class ETF Shares to potential trading halts and the delisting process under Rule 14.12.

currently applicable to Index Fund Shares, Managed Fund Shares and ETF Shares, among other product types, to monitor trading in Multi-Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Multi-Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Multi-Class ETF Shares, to the extent that a series of Multi-Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of Multi-Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Multi-Class ETF Shares, as provided under Rule 14.10(e)(1)(E) to Rule 14.10.³⁵

The Exchange believes that permitting Multi-Class ETF Shares to list on the Exchange is consistent with the applicable exemptive relief and will help perfect the mechanism of a free and open market and, in general, will protect investors and the

³⁵ The Exchange notes that these proposed changes would subject Multi-Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

public interest in that it will permit the listing and trading of Multi-Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Multi-Class ETF Shares described above would be to the benefit of investors. Eliminating any unnecessary delay for additional Multi-Class ETF Shares listing on the Exchange under proposed Rule 14.11(n) will simply help accrue those benefits to investors more expeditiously. Further, the Exchange is only proposing to amend its rules to allow such a series of Multi-Class ETF Shares to list on the Exchange pursuant to Rule 14.11(n), a change to its rules that will only be meaningful if and when the Commission grants such relief to an Applicant. As noted above, the Exchange submits this proposal only to prevent any unnecessary delay in listing additional Multi-Class ETF Shares generically under Rule 14.11(n) when and if such requests are granted by the Commission.

The Exchange also believes that proposed Rule 14.11(n) to explicitly provide that the initial and continued listing standards applicable to Multi-Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules. The Exchange believes that with these changes, Rule 14.11(n) would clearly allow for the listing and trading of Multi-Class ETF Shares upon the Commission's order of exemptive relief.

The Exchange also believes that the corresponding change to amend the Exchange's definitions, corporate governance requirements under Rule 14.10(e), and other provisions of Rule 14.11 in order to accommodate the proposed listing of Multi-Class ETF Shares will add clarity to the Exchange's Rulebook. ETF Shares, Managed

Fund Shares, and Index Fund Shares are similarly included in these definitions and exempt from the applicable corporate governance requirements. Therefore, the Exchange believes these are non-substantive changes meant only to subject Multi-Class ETF Shares to the same corporate governance requirements currently applicable to Index Fund Shares, Managed Fund Shares, and ETF Shares. All other corporate governance requirements that Multi-Class ETF Shares are not specifically exempted from will otherwise apply.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Multi-Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, would introduce additional competition among various ETF products to the benefit of investors.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action on the proposed rule change specified in Section 19(b)(2) of the Act.³⁶

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.

³⁶

15 U.S.C. 78s(b)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2024-112]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Adopt Rule 14.11(n) to Permit the Generic Listing and Trading of Multi-Class Exchange-Traded Fund (“ETF”) Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to adopt Rule 14.11(n) to permit the generic listing and trading of Multi-Class Exchange-Traded Fund (“ETF”) Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act of 1940 (the “Investment Company Act”) and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act of 1940 and the rules and regulations thereunder that permit the trust

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded.

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/), 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

This Amendment No. 1 to SR-CboeBZX-2024-112 amends and replaces in its entirety the proposal as originally submitted on November 8, 2024. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to adopt new Rule 14.11(n) for the purpose of permitting the generic listing and trading, or trading pursuant to unlisted trading privileges, of Multi-Class Exchange-Traded Fund ("ETF") Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act of 1940 (the "Investment Company Act"), and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permit the trust

issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund.³ The Exchange is also proposing to make conforming changes to the Exchange's definitions, corporate governance requirements under Rule 14.10(e), and other provisions of Rule 14.11 in order to accommodate the proposed listing of Multi-Class ETF Shares.

Consistent with Index Fund Shares, Managed Fund Shares, and ETF Shares listed under the generic listing standards in Rule 14.11(c), 14.11(i), and 14.11(l), respectively, series of Multi-Class ETF Shares that comply with the requirements of Rule 6c-11 under the Investment Company Act, and are eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permit the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund would be permitted to be listed and traded on the Exchange without prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.⁴

³ The Exchange notes that it had previously submitted a version of this filing on April 15, 2024. See Securities Exchange Act Release No. 34-100034 (May 1, 2024) 89 FR 35255. That filing was withdrawn on November 8, 2024 and submitted this proposal.

⁴ Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As contemplated by this Rule 14.11(n), the Exchange proposes new Rule 14.11(n) to establish generic listing standards for Multi-Class ETFs that are permitted to operate in reliance on exemptive relief to Rule 6c-11 under the Investment Company Act that permits the trust issuing the Multi-Class ETF Shares to offer an exchange-traded fund class in addition to classes of shares that are not exchange-traded of an open-end fund. A Multi-Class ETF listed under proposed Rule 14.11(n) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

Background

There are numerous applications for exemptive relief for Multi-Class ETF Shares currently before the Commission⁵ that request exemptive relief similar to that previously granted to other funds that are not listed on the Exchange.⁶ This proposal would provide for the “generic” listing and/or trading of Multi-Class ETF Shares under proposed Rule 14.11(n) on the Exchange immediately upon the Commission’s applicable order granting exemptive relief to the outstanding applications. The Exchange submits this proposal only to prevent any unnecessary delay in listing additional Multi-Class ETF Shares generically under Rule 14.11(n) when and if such requests are granted by the Commission.

Starting in 2000, the Commission began granting limited relief for The Vanguard Group, Inc. (“Vanguard”) to offer certain index-based open-end management investment companies with Multi-Class ETF Shares.⁷ After this relief was granted, there was limited

⁵ See Perpetual US Services, LLC (filed February 7, 2023); DFA Investment Dimensions Group Inc. and Dimensional Investment Group Inc. (filed July 12, 2023); F/m Investments LLC (August 22, 2023); Fidelity Hastings Street Trust and Fidelity Management & Research Company (filed October 24, 2023); Morgan Stanley Institutional Fund Trust and Morgan Stanley Investment Management Inc. (filed January 29, 2024); First Trust Series Fund and First Trust Variable Insurance Trust (filed January 24, 2024); Guinness Atkinson Funds (filed February 27, 2024); and Metropolitan West Funds, TCW ETF Trust, and TCW Funds, Inc. (filed March 20, 2024).

⁶ Infra note 6.

⁷ See Vanguard Index Funds, Investment Company Act Release Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order). The Commission itself, as opposed to the Commission staff acting under delegated authority, considered the original Vanguard application and determined that the relief was appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In the process of granting the order, the Commission also considered and denied a hearing request on the original application, as reflected in the final Commission order. See also the Vanguard Group, Inc., Investment Company Act Release Nos. 26282 (Dec. 2, 2003) (notice) and 26317 (Dec. 30, 2003) (order); Vanguard International Equity Index Funds, Investment Company Act Release Nos. 26246 (Nov. 3, 2003) (notice) and 26281 (Dec. 1, 2003) (order); Vanguard Bond Index Funds, Investment Company Act Release Nos. 27750 (Mar. 9, 2007) (notice) and 27773 (April 2, 2007) (order) (collectively referred to as the “Vanguard Orders”).

public discourse about Multi-Class ETF Shares until 2019, when the prospect of providing blanket exemptive relief to Multi-Class ETF Shares was addressed in the Commission’s adoption of Rule 6c-11 under the Investment Company Act (the “ETF Rule”).⁸ The ETF Rule permits ETFs that satisfy certain conditions to operate without the expense or delay of obtaining an exemptive order. However, the ETF Rule did not provide blanket exemptive relief to allow for Multi-Class ETF Shares as part of the final rule. Instead, the Commission concluded that Multi-Class ETF Shares should request relief through the exemptive application process so that the Commission may assess all relevant policy considerations in the context of the facts and circumstances of particular applicants. The Exchange adopted Rule 14.11(l)⁹ shortly after the implementation of the ETF Rule and, because there were no exemptive applications before the Commission and because none of the Multi-Class ETF Shares that were previously granted exemptive relief listed on the Exchange, did not propose to include any language comparable to what is being proposed herein.

As noted above, a number of applications for exemptive relief to permit the applicable fund to offer Multi-Class ETF Shares (the “Applications”) have been submitted to the Commission starting in early 2023. In general, the Applications state that the ability of a fund to offer Multi-Class ETF Shares, i.e., both a class of mutual fund shares (each such class, a “Mutual Fund class” and such shares “Mutual Fund Shares”) and ETF Shares, could be beneficial to the fund and to shareholders of each type of class

⁸ See Securities Exchange Act Release No. 33-10695 (October 24, 2019) 84 FR 57162 (the “ETF Rule Adopting Release”).

⁹ See Securities Exchange Act No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares).

for various reasons, including more efficient portfolio management, better secondary market trading opportunities, and cost efficiencies, among others.¹⁰

While Multi-Class ETF Shares could potentially be listed under existing Exchange Rules 14.11(c) or 14.11(i), doing so would unnecessarily re-introduce the burdensome quantitative portfolio requirements and ongoing compliance obligations associated therewith that existed before the adoption of Rule 6c-11 and Exchange Rule 14.11(l).¹¹ The Exchange is not aware of any clear policy rationale as to why those quantitative requirements should apply to Multi-Class ETF Shares other than the rules are already in place. As such, listing Multi-Class ETF Shares under these older rules would

¹⁰ Specifically, the Applicants believe that a Mutual Fund class would benefit ETF class shareholders because investor cash flows through a Mutual Fund class can be used for efficient portfolio rebalancing. To the extent that cash flows come into a fund through a Mutual Fund class, a portfolio manager may be able to deploy that cash strategically to rebalance the portfolio. Second, cash flows through a Mutual Fund class may allow for greater creation basket flexibility for creations and redemptions through the ETF class, which could promote arbitrage efficiency and smaller spreads on the trading of ETF Shares in the secondary market. With respect to existing funds, ETF classes would permit investors that prefer the ETF structure to gain access to established funds' investment strategies. Additionally, the establishment of an ETF class as part of an existing fund could lead to cost efficiencies. Specifically, in terms of fund expenses, an ETF class could have initial and ongoing advantages for its shareholders, where shareholders of an ETF class of a fund that already has substantial assets could immediately benefit from economies of scale. Finally, the tax-free conversion of shares from the Mutual Fund class to the ETF class may accelerate the development of an ETF shareholder base. Subsequent secondary market transactions by the ETF class shareholders could generate greater trading volume, resulting in lower trading spreads and/or premiums or discounts in the market prices of the ETF Shares to the benefit of ETF shareholders. The Applicants also believe that an ETF class would benefit Mutual Fund class shareholders because in-kind transactions through the ETF class may contribute to lower portfolio transaction costs and greater tax efficiency. Additionally, the conversion feature could allow Mutual Fund shareholders to convert Mutual Fund Shares for ETF Shares without adverse consequences to the Fund by allowing Mutual Fund shareholders to convert their shares into the ETF class of the same fund rather than redeeming their Mutual Fund Shares and buying shares of another ETF. In doing so, the converting shareholder could save on transaction costs and potential tax consequences that may otherwise be incurred in redeeming their existing shares and buying separate ETF Shares. The ETF class would also represent an additional distribution channel for a fund that could lead to additional asset growth and economies of scale; greater assets under management may lead to additional cost efficiencies and an improved tax profile for the fund may also assist the competitive position of the Fund for attracting prospective shareholders. Last, the class of ETF Shares could allow certain investors to engage in more frequent trading without disrupting the fund's portfolio.

¹¹ See e.g., Exchange Rule 14.11(c) and 14.11(i).

place undue burdens on both the Exchange and fund issuers because of the quantitative portfolio requirements that currently do not apply to ETFs meeting the requirements of Rule 6c-11 and Rule 14.11(l). Furthermore, while the Applicants generally seek the same exemptive relief as granted under those previous orders,¹² several Applicants have proposed different conditions to the relief that reflect the adoption of Rule 6c-11.

Therefore, the Exchange believes there is a reasonable relationship between the Applications and the proposed rule change to allow for the Commission's evaluation of whether the proposed rule change is consistent with the Act. The Exchange also acknowledges that approval of this proposed rule change would not necessarily result in the listing and trading of the additional Multi-Class ETF Shares under the proposed Rule until and unless the necessary relief was granted by the Division of Investment Management, but approving this proposal would address any potential concerns the Commission's division of Trading and Markets might have as it specifically relates to the listing and trading of Multi-Class ETF Shares under proposed Rule 14.11(n) and would allow for a smooth launch process if and when such relief is granted.¹³

¹² Supra note 6.

¹³ The Commission has in some instances historically approved Exchange listing rules even when no products would necessarily be permitted to list under those rules. Most recently, the Commission approved Exchange proposals to list and trade shares of ether-based exchange-traded products ("ETPs") prior to any such products having an effective registration statement. As those ether-based ETPs could not trade on the Exchange without an effective registration statement, which were separately considered by the Commission's division of corporate finance, the Exchange could not list and trade those products even with proper Exchange Rules in place. The Exchange believes this example illustrates the reasonability of the Exchange pursuing the adoption a proposed Rule that would not immediately result in the listing and trading of the applicable products thereunder. See Securities Exchange Act No. 100224 (May 23, 2024) 89 FR 46937 (May 30, 2024) (Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Shares of Ether-Based Exchange-Traded Products).

Proposal

Proposed Rule 14.11(n)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Multi-Class ETF Shares that meet the criteria of this Rule 14.11(n).¹⁴

Proposed Rule 14.11(n)(2) provides that the proposed rule would be applicable only to Multi-Class ETF Shares. Except to the extent inconsistent with this Rule 14.11(n), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Multi-Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(n)(2) further provides that: (A) transactions in Multi-Class ETF Shares will occur throughout the Exchange’s trading hours; and (B) the Exchange will implement and maintain written surveillance procedures for Multi-Class ETF Shares.

Proposed Rule 14.11(n)(3)(A) provides that the term “Multi-Class ETF Shares” shall mean shares of stock issued by a Multi-Class ETF.

Proposed Rule 14.11(n)(3)(B) provides that the term “Multi-Class ETF” means a fund that is subject to the same relief and constraints as exchange-traded funds under

¹⁴ To the extent that a series of Multi-Class ETF Shares does not satisfy one or more of the criteria in proposed Rule 14.11(n), the Exchange may file a separate proposal under Section 19(b) of the Act in order to list such series on the Exchange. Consistent with Rule 14.11(a), any of the statements or representations in that proposal regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in any filing to list such series of Multi-Class ETF Shares shall constitute continued listing requirements for the series of Multi-Class ETF Shares. Further, in the event that a series of Multi-Class ETF Shares becomes listed under proposed Rule 14.11(n) and subsequently can no longer rely on the applicable exemptive relief to Rule 6c-11, such series of Multi-Class ETF Shares may be listed as a series of Index Fund Shares under Rule 14.11(c) or Managed Fund Shares under Rule 14.11(i), as applicable, as long as the series of Multi-Class ETF Shares meets all listing requirements applicable under the applicable rule.

Rule 6c-11 under the Investment Company except that the security is issued by a trust that issues Multi-Class ETF Shares in addition to classes of shares of an open-end fund that are not exchange-traded.

Proposed Rule 14.11(n)(3)(C) provides that the term “Reporting Authority” in respect of a particular series of Multi-Class ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Multi-Class ETF Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Multi-Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required in connection with issuance of Multi-Class ETF Shares, or other information relating to the issuance, redemption or trading of Multi-Class ETF Shares. A series of Multi-Class ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(n)(4) provides that the Exchange may approve a series of Multi-Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of Multi-Class ETF Shares complies with the requirements of Rule 6c-11 under the Investment Company Act, and is eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder that permits the fund to offer Multi-Class ETF Shares, and must satisfy the requirements of this Rule 14.11(n) on an initial and continued listing basis.

Proposed Rule 14.11(n)(4)(A) provides that the requirements of paragraph (4) of this Rule must be satisfied by a series of Multi-Class ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis. Further, proposed Rule 14.11(n)(4)(A) provides that: (i) for each series, the Exchange will establish a minimum number of Multi-Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) if an index underlying a series of Multi-Class ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of Multi-Class ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class ETF’s portfolio; and (iii) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of Multi-Class ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Multi-Class ETFs, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer in compliance with the requirements of Rule 6c-11 under the Investment Company Act or of the applicable exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(n)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current index or portfolio value; the current value of the portfolio of securities required to be deposited in connection with issuance of Multi-Class ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of

Multi-Class ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of Multi-Class ETF Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

The Exchange is also proposing to make corresponding amendments to include Multi-Class ETF Shares in other Exchange rules. First, the Exchange is proposing to add Multi-Class ETF Shares to the definition of UTP Security in Rule 1.5(ee) and to amend Rule 14.11(c)(3)(A)(i)(a) in order to include Multi-Class ETF Shares in the definition of Derivative Securities Products.

Second, the Exchange proposes to amend Rule 14.10(e)(1)(E)(ii) to exempt Multi-Class ETF Shares from the requirements of Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act and does not otherwise require shareholder approval under the Investment Company Act and the rules thereunder or any other Exchange rule.¹⁵

¹⁵ The Exchange notes that these proposed changes would subject Multi-Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

Third, the Exchange proposes to amend Rule 14.10(e)(1)(F)(ii) to include Multi-Class ETF Shares in the definition of “Derivative Securities” for purposes of Rule 14.10. Inclusion in such definition would exempt Multi-Class ETF Shares from the requirements relating to Independent Directors (as set forth in Rule 14.10(c)(2)), Compensation Committees (as set forth in Rule 14.10(c)(4)), Director Nominations (as set forth in Rule 14.10(c)(5)), Code of Conduct (as set forth in Rule 14.10(d)), and Meetings of Shareholders (as set forth in Rule 14.10(f)). In addition, these issuers are exempt from the requirements relating to Audit Committees (as set forth in Rule 14.10(c)(3)), except for the applicable requirements of SEC Rule 10A-3.¹⁶

Discussion

Proposed Rule 14.11(n) is based in large part on Rules 14.11(c), (i), and (l) related to the listing and trading of Index Fund Shares, Managed Fund Shares, and ETF Shares on the Exchange, respectively, each of which are issued under the 1940 Act and qualify as ETF Shares under Rule 6c-11. Rule 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. ETF Shares are identical to Multi-Class ETF Shares except that Multi-Class ETF Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes that using Rules 14.11(c) and (i) (collectively, the “Current Multi-Class ETF Standards”) as well as Rule 14.11(l) as the basis for proposed Rule 14.11(n) is appropriate because they are generally designed to address the issues associated with

¹⁶ Id.

Multi-Class ETF Shares. The only substantial difference between Rule 14.11(l) and proposed Rule 14.11(n) from the Current ETF Standards that are not otherwise required under Rule 6c-11 is that proposed Rule 14.11(n) and Rule 14.11(l) do not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards. This difference is discussed below.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of Multi-Class ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11, the Investment Company Act, and any applicable exemptive relief on an ongoing basis. While proposed Rule 14.11(n) does not include the quantitative requirements applicable to an ETF or an ETF's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),¹⁷ the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(n)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(n)(4)(B)(i). The Exchange will also halt trading in Multi-Class ETF Shares under the conditions specified in Rule 11.18, "Trading Halts Due to Extraordinary Market Volatility." The Exchange also believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that have come from Rule 6c-11, specifically the additional flexibility

¹⁷ The Exchange notes that Rules 14.11(c) and (i) include certain quantitative standards related to the size, trading volume, concentration, and diversity of the holdings of a series of Index Fund Shares or Managed Fund Shares (the "Holdings Standards") as well as related to the minimum number of beneficial holders of a fund (the "Distribution Standards"). The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

provided to issuers of Multi-Class ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.¹⁸ The Exchange believes that the combination of these factors will act to keep Multi-Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Multi-Class ETF Shares on the Exchange without the inclusion of quantitative standards.¹⁹ The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met.²⁰ Specifically, the Exchange will review the website of each series of Multi-Class ETF Shares listed on the Exchange in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) would require an issuer of Multi-Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

¹⁸ The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Rule 6c-11 Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

¹⁹ The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of Multi-Class ETF Shares or the distribution of the Multi-Class ETF Shares.

²⁰ As noted throughout, proposed Rule 14.11(n), unlike Rule 14.11(c) and 14.11(i), does not include Holdings Standards and, as such, there will be no quantitative standards applicable by the Exchange to the portfolio holdings of a series of Multi-Class ETF Shares on an initial or continued listing basis.

The Exchange may suspend trading in and commence delisting proceedings for a series of Multi-Class ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.²¹ The Exchange also notes that Rule 14.11(a) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 14.11(n), which would include any failure of the issuer to comply with Rule 6c-11, the Investment Company Act, or any exemptive relief applicable to Multi-Class ETF Shares.²²

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Multi-Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to ETF Shares, Index Fund Shares and Managed Fund Shares, among other product types, to monitor trading in

²¹ Specifically, proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 or any applicable exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

²² The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 14.11(a) would itself be considered non-compliance with the requirements of Rule 14.11 and would subject the series of Multi-Class ETF Shares to potential trading halts and the delisting process under Rule 14.12.

Multi-Class ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group (“ISG”) or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Multi-Class ETF Shares reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”). FINRA also can access data obtained from the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Multi-Class ETF Shares, to the extent that a series of Multi-Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of Multi-Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Multi-Class ETF Shares, as provided under Rule 14.10(e)(1)(E).²³

The Exchange notes that it may consider all relevant factors in exercising its discretion to halt or suspend trading in a series of Multi-Class ETF Shares. Trading may

²³ The Exchange notes that these proposed changes would subject ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

be halted if the circuit breaker parameters in Rule 11.18 have been reached, because of other market conditions, or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which certain information about the Multi-Class ETF Shares that is required to be disclosed under Rule 6c-11 of the Investment Company Act is not being made available, including specifically where the Exchange becomes aware that the net asset value or the daily portfolio disclosure with respect to a series of Multi-Class ETF Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the daily portfolio disclosure is available to all market participants;²⁴ (2) if an interruption to the dissemination to the value of the index or reference asset on which a series of Multi-Class ETF Shares is based persists past the trading day in which it occurred or is no longer calculated or available; (3) trading in the securities comprising the underlying index or portfolio has been halted in the primary market(s); or (4) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²⁵ Specifically, the Exchange believes the

²⁴ The Exchange will obtain a representation from the issuer of Multi-Class ETF Shares that the net asset value per share will be calculated daily and the requirements under 6c-11 will be satisfied for the series will be calculated daily and made available to all market participants at the same time.

²⁵ 15 U.S.C. 78f(b).

proposed rule change is consistent with the Section 6(b)(5)²⁶ requirements that the rules of an exchange be 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed Rule 14.11(n) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading Multi-Class ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(n)(4) sets forth initial and continued listing criteria applicable to Multi-Class ETF Shares, specifically providing that the Exchange may approve a series of Multi-Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of Multi-Class ETF Shares complies with the requirements of Rule 6c-11 under the Investment Company Act, and is eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act and the rules and regulations thereunder

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ Id.

that permits the fund to offer Multi-Class ETF Shares, and must satisfy the requirements of this Rule 14.11(n) on an initial and continued listing basis.²⁸ The Exchange will submit a Form 19b-4(e) for all series of Multi-Class ETF Shares upon being listed pursuant to Rule 14.11(n) and such Form 19b-4(e) will specifically note that such series of Multi-Class ETF Shares are being listed on the Exchange pursuant to Rule 14.11(n).

Proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer in compliance with the requirements of Rule 6c-11 under the Investment Company Act of 1940 or the exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists

²⁸ The Exchange notes that eligibility to operate in reliance on Rule 6c-11 or any applicable exemptive relief thereunder does not necessarily mean that an investment company would be listed on the Exchange pursuant to proposed Rule 14.11(n). To this point, an investment company that operates in reliance of exemptive relief providing for Multi-Class ETF Shares could also be listed as a series of Index Fund Shares or Managed Fund Shares pursuant to Rule 14.11(c) or 14.11(i), respectively, and would be subject to all requirements under each of those rules. Further to this point, in the event that a series of Multi-Class ETF Shares listed on the Exchange preferred to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), nothing would preclude such a series from changing to be listed as a series of Index Fund Shares or Managed Fund Shares (as applicable), as long as the series met each of the initial and continued listing obligations under the applicable rules.

which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. The Exchange notes that it may become aware that the issuer is no longer compliant with Rule 6c-11 or any applicable exemptive relief thereunder, as described in proposed Rule 14.11(n)(4)(B)(i)(a), as a result of either the Exchange identifying non-compliance through its own monitoring process or through notification by the issuer. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing. The Exchange also notes that it will obtain a representation from the issuer of each series of Multi-Class ETF Shares stating that the requirements of Rule 6c-11 will be continuously satisfied and that the issuer will notify the Exchange of any failure to do so.

The Exchange further believes that proposed Rule 14.11(n) is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.11(n)(2)(C) along with the similarities of proposed Rule 14.11(n) to the rules related to other securities that are already listed and traded on the Exchange and which would qualify as Multi-Class ETF Shares. Proposed Rule 14.11(n) is based in large part on Rules 14.11(c) and (i) related to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange, respectively, both of which are issued under the 1940 Act and would qualify as Multi-Class ETF Shares. Rules 14.11(c) and 14.11(i) are very similar, their primary difference being that Index Fund Shares are designed to track an underlying index and Managed Fund Shares are based on an actively managed portfolio that is not designed to track an index. ETF Shares are identical to Multi-Class ETF Shares except that Multi-Class ETF

Shares have received exemptive relief to operate an exchange-traded fund class in addition to classes of shares that are not exchange-traded. As such, the Exchange believes that using the Current ETF Standards and Rule 14.11(l) as the basis for proposed Rule 14.11(n) is appropriate because they are generally designed to address the issues associated with Multi-Class ETF Shares. The only substantial difference between proposed Rule 14.11(n) and the Current ETF Standards that are not otherwise required under Rule 6c-11 is that proposed Rule 14.11(n) does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards.

The Exchange believes that the proposal is consistent with Section 6(b)(1) of the Act²⁹ in that, in addition to being designed to prevent fraudulent and manipulative acts and practices, the Exchange has the capacity to enforce proposed Rule 14.11(n) by performing ongoing surveillance of Multi-Class ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11 and the 1940 Act on an ongoing basis. While proposed Rule 14.11(n) does not include the quantitative requirements applicable to a fund and a fund's holdings or underlying index that are included in Rules 14.(c) and 14.11(i),³⁰ the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange's surveillance procedures, the Exchange's ability to halt trading under the proposed Rule 14.11(n)(4)(B)(ii), and the Exchange's ability to suspend trading and commence delisting proceedings under proposed Rule 14.11(n)(4)(B)(i). The Exchange also believes that such

²⁹ 15 U.S.C. 78f(b)(1).

³⁰ The Exchange notes that Rules 14.11(c) and (i) include certain Holdings Standards and Distribution Standards. The Exchange believes that to the extent that manipulation concerns are mitigated based on the factors described herein, such concerns are mitigated both as it relates to the Holdings Standards and the Distribution Standards.

concerns are further mitigated by enhancements to the arbitrage mechanism that have come from compliance with Rule 6c-11, specifically the additional flexibility provided to issuers of Multi-Class ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c-11.³¹ The Exchange believes that the combination of these factors will act to keep Multi-Class ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of Multi-Class ETF Shares on the Exchange without the inclusion of quantitative standards.³² The Exchange will monitor for compliance with Rule 6c-11 and any applicable exemptive relief in order to ensure that the continued listing standards are being met. Specifically, the Exchange plans to review the website of series of Multi-Class ETF Shares in order to ensure that the requirements of Rule 6c-11 are being met. The Exchange will also employ numerous intraday alerts that will notify Exchange personnel of trading activity throughout the day that is potentially indicative of certain disclosures not being made accurately or the presence of other unusual conditions or circumstances that could be detrimental to the maintenance of a fair and orderly market. As a backstop to the surveillances described above, the Exchange also notes that Rule 14.11(a) would require an issuer of Multi-Class ETF Shares to notify the Exchange of any failure to comply with Rule 6c-11 or the Investment Company Act.

³¹ The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Rule 6c-11 Release at 15-18; 60-61; 69-70; 78-79; 82-84; and 95-96.

³² The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of Multi-Class ETF Shares or the distribution of the Multi-Class ETF Shares.

To the extent that any of the requirements under Rule 6c-11 or the 1940 Act are not being met, the Exchange may halt trading in a series of Multi-Class ETF Shares as provided in proposed Rule 14.11(n)(4)(B)(ii). Further, the Exchange may also suspend trading in and commence delisting proceedings for a series of Multi-Class ETF Shares where such series is not in compliance with the applicable listing standards or where the Exchange believes that further dealings on the Exchange are inadvisable.³³ The Exchange also notes that Rule 14.11(a) requires any issuer to provide the Exchange with prompt notification after it becomes aware of any non-compliance with proposed Rule 14.11(n), which would include any failure of the issuer to comply with Rule 6c-11 or the 1940 Act.³⁴

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the Multi-Class ETF Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are

³³ Specifically, proposed Rule 14.11(n)(4)(B) provides that each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.11(n)(4)(B)(i) and (ii). Proposed Rule 14.11(n)(4)(B)(i) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances: (a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 or any exemptive relief applicable to Multi-Class ETF Shares; (b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained; (c) if, following the initial twelve month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or (d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(n)(4)(B)(ii) provides that upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

³⁴ The Exchange notes that failure by an issuer to notify the Exchange of non-compliance pursuant to Rule 14.11(a) would itself be considered non-compliance with the requirements of Rule 14.11 and would subject the series of Multi-Class ETF Shares to potential trading halts and the delisting process under Rule 14.12.

currently applicable to Index Fund Shares, Managed Fund Shares and ETF Shares, among other product types, to monitor trading in Multi-Class ETF Shares. The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in Multi-Class ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of Multi-Class ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB's EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of Multi-Class ETF Shares, to the extent that a series of Multi-Class ETF Shares holds municipal securities. Finally, as noted above, the issuer of a series of Multi-Class ETF Shares will be required to comply with Rule 10A-3 under the Act for the initial and continued listing of Multi-Class ETF Shares, as provided under Rule 14.10(e)(1)(E) to Rule 14.10.³⁵

The Exchange believes that permitting Multi-Class ETF Shares to list on the Exchange is consistent with the applicable exemptive relief and will help perfect the mechanism of a free and open market and, in general, will protect investors and the

³⁵ The Exchange notes that these proposed changes would subject Multi-Class ETF Shares to the same corporate governance requirements as other open-end management investment companies listed on the Exchange.

public interest in that it will permit the listing and trading of Multi-Class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors. Specifically, the Exchange believes that the relief proposed in the Applications and the expected benefits of the Multi-Class ETF Shares described above would be to the benefit of investors. Eliminating any unnecessary delay for additional Multi-Class ETF Shares listing on the Exchange under proposed Rule 14.11(n) will simply help accrue those benefits to investors more expeditiously. Further, the Exchange is only proposing to amend its rules to allow such a series of Multi-Class ETF Shares to list on the Exchange pursuant to Rule 14.11(n), a change to its rules that will only be meaningful if and when the Commission grants such relief to an Applicant. As noted above, the Exchange submits this proposal only to prevent any unnecessary delay in listing additional Multi-Class ETF Shares generically under Rule 14.11(n) when and if such requests are granted by the Commission.

The Exchange also believes that proposed Rule 14.11(n) to explicitly provide that the initial and continued listing standards applicable to Multi-Class ETF Shares, including the suspension of trading or removal standards, are designed to promote transparency and clarity in the Exchange's Rules. The Exchange believes that with these changes, Rule 14.11(n) would clearly allow for the listing and trading of Multi-Class ETF Shares upon the Commission's order of exemptive relief.

The Exchange also believes that the corresponding change to amend the Exchange's definitions, corporate governance requirements under Rule 14.10(e), and other provisions of Rule 14.11 in order to accommodate the proposed listing of Multi-Class ETF Shares will add clarity to the Exchange's Rulebook. ETF Shares, Managed

Fund Shares, and Index Fund Shares are similarly included in these definitions and exempt from the applicable corporate governance requirements. Therefore, the Exchange believes these are non-substantive changes meant only to subject Multi-Class ETF Shares to the same corporate governance requirements currently applicable to Index Fund Shares, Managed Fund Shares, and ETF Shares. All other corporate governance requirements that Multi-Class ETF Shares are not specifically exempted from will otherwise apply.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposal, by permitting the listing and trading of Multi-Class ETF Shares under exemptive relief from the Investment Company Act and the rules and regulations thereunder, would introduce additional competition among various ETF products to the benefit of investors.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-112 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-2024-112. 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 (<https://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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-112 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁶

Sherry R. Haywood,

Assistant Secretary.

³⁶

17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 1.5. Definitions

* * * * *

(a)-(dd)

(ee) The term “UTP Security” shall mean any security that is not listed on the Exchange but is traded on the Exchange pursuant to unlisted trading privileges, and a “UTP Derivative Security” shall mean any one of the following Derivative Securities that trades on the Exchange pursuant to unlisted trading privileges:

- Equity Linked Notes
- Index Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(c) or Nasdaq Stock Market LLC Rule 5705(b) and Investment Company Units listed pursuant to NYSE Arca, Inc. Rule 5.2- E(j)(3)
- Index-Linked Exchangeable Notes
- Equity Gold Shares
- Equity Index-Linked Securities
- Commodity-Linked Securities
- Currency-Linked Securities
- Fixed Income Index-Linked Securities
- Futures-Linked Securities
- Multifactor Index-Linked Securities
- Trust Certificates
- Currency and Index Warrants
- Portfolio Depository Receipts
- Trust Issued Receipts
- Commodity-Based Trust Shares
- Currency Trust Shares
- Commodity Index Trust Shares
- Commodity Futures Trust Shares
- Partnership Units
- Paired Trust Shares
- Trust Units
- Managed Fund Shares

- Managed Trust Securities
- Managed Portfolio Shares
- Tracking Fund Shares listed pursuant to Cboe BZX Exchange, Inc. Rule 14.11(m), Active Proxy Portfolio Shares listed pursuant to NYSE Arca, Inc. Rule 8.601-E, and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750
- Selected Equity-linked Debt Securities (“SEEDS”)
- Exchange-Traded Fund Shares
- Multi-Class ETF Shares

* * * * *

Rule 14.10. Corporate Governance Requirements

(a)-(d) No change.

(e) Exemptions from Certain Corporate Governance Requirements

This Rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets, and Companies ceasing to be Smaller Reporting Companies. This Rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(1) Exemptions to the Corporate Governance Requirements

(A)-(D) No change.

(E) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 14.10, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the requirements relating to:

(i) No change.

(ii) Management investment companies that are Index Fund Shares (as set forth in Rule 14.11(c)), Managed Fund Shares (as set forth in Rule 14.11(i)), Managed Portfolio Shares (as set forth in Rule 14.11(k)), ETF Shares (as set forth in Rule 14.11(l)), [and]Tracking Fund Shares (as set forth in Rule 14.11(m), and Multi-Class ETF Shares (as set forth in Rule 14.11(n)) shall not be required to comply with Rule 14.10(i)(1) in connection with the acquisition of the stock or assets of an affiliated registered investment company in a transaction that complies with Rule 17a-8 under the Investment Company Act of 1940 and does not otherwise require shareholder approval under the Investment Company Act of 1940 and the rules thereunder or any other Exchange rule. Management

investment companies defined as Derivative Securities under Rule 14.10(e)(1)(F)(ii) are exempt from additional requirements of Exchange Rule 14.10 as outlined in Exchange Rule 14.10(e)(1)(F)(i) below.

(iii) No change.

(F) Issuers of Non-Voting Preferred Securities, Debt Securities and Derivative Securities.

(i) No change.

(ii) For the purposes of this Rule 14.10 only, the term “Derivative Securities” is defined as the following: Commodity Futures Trust Shares (Rule 14.11(e)(7)), Commodity Index Trust Shares (Rule 14.11(e)(6)), Commodity-Based Trust Shares (Rule 14.11(e)(4)), Commodity-Linked Securities (Rule 14.11(d)(K)(ii)), Currency Trust Shares (Rule 14.11(e)(5)), Equity Gold Shares (Rule 14.11(e)(2)), Equity Index-Linked Securities (Rule 14.11(d)(K)(i)), ETF Shares (Rule 14.11(l)), Fixed Income Index-Linked Securities (Rule 14.11(d)(K)(iii)), Futures-Linked Securities (Rule 14.11(d)(K)(iv)), Index Fund Shares (Rule 14.11(c)), Index-Linked Exchangeable Notes (Rule 14.11(e)(1)), Managed Fund Shares (Rule 14.11(i)), Managed Portfolio Shares (Rule 14.11(k)), Managed Trust Securities (Rule 14.11(e)(10)), Multi-Class ETF Shares (Rule 14.11(n)), Multifactor Index-Linked Securities (Rule 14.11(d)(K)(v)), Partnership Units (Rule 14.11(e)(8)), Portfolio Depository Receipts (Rule 14.11(b)), SEEDS (Rule 14.11(e)(12)), Tracking Fund Shares (Rule 14.11(m)), Trust Certificates (Rule 14.11(e)(3)), and Trust Issued Receipts (Rule 14.11(f)). Derivative Securities are subject to certain exemptions to the Rule 14.10 as described in Exchange Rule 14.10(e)(1)(F).

* * * * *

Rule 14.11. Other Securities

(a) – (b) No change.

(c) Index Fund Shares

(1)-(2) No change.

(3) Equity. The Exchange may approve a series of Index Fund Shares for listing and trading pursuant to Rule 19b-4(e) under the Act provided each of the following criteria is satisfied:

(A) Eligibility Criteria for Index Components.

(i) U.S. Index or Portfolio. Component stocks of an index or portfolio of (a) only U.S. Component Stocks or (b) US Component Stocks and

cash underlying such series of Index Fund Shares listed pursuant to Rule 19b-4(e) under the Act shall meet the following criteria upon initial listing and on a continual basis:

(a) Component stocks (excluding Index Fund Shares, Portfolio Depositary Receipts, Trust Issued Receipts, ETF Shares, Multi-Class ETF Shares, and Managed Fund Shares collectively, “Derivative Securities Products”) that in the aggregate account for at least 90% of the weight of the U.S. Component Stocks portion of the index or portfolio (excluding such Derivative Securities Products) each shall have a minimum market value of at least \$75 million;

* * * * *

(n) Multi-Class ETF Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, the shares of Multi-Class ETF Shares that meet the criteria of this Rule 14.11(n).

(2) Applicability. This Rule 14.11(n) is applicable only to Multi-Class ETF Shares. Except to the extent inconsistent with this Rule 14.11(n), or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Multi-Class ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

(A) Transactions in Multi-Class ETF Shares will occur throughout the Exchange’s trading hours.

(B) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Multi-Class ETF Shares.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Multi-Class ETF Share. The term “Multi-Class ETF Share” means shares of stock issued by a Multi-Class ETF.

(B) Multi-Class ETF. The term “Multi-Class ETF” means a fund that is subject to the same relief and constraints as exchange-traded funds under Rule 6c-11 under the Investment Company Act of 1940 except that the security is issued by a trust that issues Multi-Class ETF Shares in addition to classes of shares of an open-end fund that are not exchange-traded.

(C) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Multi-Class ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Multi-Class ETF Shares (if the Exchange is trading such series

pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of Multi-Class ETF Shares, net asset value, index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of Multi-Class ETF Shares, or other information relating to the issuance, redemption or trading of Multi-Class ETF Shares. A series of Multi-Class ETF Shares may have more than one Reporting Authority, each having different functions.

(4) Initial and Continued Listing. The Exchange may approve a series of Multi-Class ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of Multi-Class ETF Shares complies with the requirements of Rule 6c-11 under the Investment Company Act of 1940, and is eligible to operate in reliance on exemptive relief from certain requirements of the Investment Company Act of 1940 and the rules and regulations thereunder that permits the fund to offer Multi-Class ETF Shares, and must satisfy the requirements of this Rule 14.11(n) on an initial and continued listing basis.

(A) The requirements of paragraph (4) of this Rule must be satisfied by a series of Multi-Class ETF Shares on an initial and continued listing basis. Such securities must also satisfy the following criteria on an initial and, except for paragraph (i) below, continued, listing basis:

(i) For each series, the Exchange will establish a minimum number of Multi-Class ETF Shares required to be outstanding at the time of commencement of trading on the Exchange;

(ii) If an index underlying a series of Multi-Class ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of Multi-Class ETF Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Multi-Class ETF’s portfolio; and

(iii) Any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of Multi-Class ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Multi-Class ETFs, personnel who make decisions on the portfolio composition must be

subject to procedures designed to prevent the use and dissemination of material non-public information regarding the applicable portfolio.

(B) Continued Listing. Each series of Multi-Class ETF Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Multi-Class ETF Shares under any of the following circumstances:

(a) if the Exchange becomes aware that the issuer of the Multi-Class ETF Shares is no longer in compliance with the requirements of Rule 6c-11 under the Investment Company Act of 1940 or of the exemptive relief applicable to Multi-Class ETF Shares;

(b) if any of the other listing requirements set forth in this Rule 14.11(n) are not continuously maintained;

(c) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Multi-Class ETF Shares, there are fewer than 50 beneficial holders of the series of Multi-Class ETF Shares for 30 or more consecutive trading days; or

(d) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(ii) Termination. Upon termination of an investment company, the Exchange requires that Multi-Class ETF Shares issued in connection with such entity be removed from Exchange listing.

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

* * * * *