

SECURITIES AND EXCHANGE COMMISSION  
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June 19, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt BZX Rule 14.11(k) to Permit the Listing and Trading of Managed Portfolio Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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

The Exchange proposes a rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

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

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

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

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

The Exchange proposes to add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company.<sup>3</sup>

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<sup>3</sup> A Managed Portfolio Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C.80a-1) (“1940 Act”) organized as an open-end management investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. The basis of this proposal is an application for exemptive relief that was filed on April 4, 2019 (the “Application”) and for which public notice was issued on April 8, 2019 (the “Notice”) (File No. 812-14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (“Precidian”); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the “Order” and, collectively, with the Application and the Notice, the “Exemptive Order”). The Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.” See Investment Company Act Release Nos. 33440 and 33477.

### Proposed Listing Rules

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio 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(k)(2)(A) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. For each series of Managed Portfolio Shares, a "Verified Intraday Indicative Value" will be disseminated in one second intervals during Regular Trading Hours. Such Verified Intraday Indicative Value is "verified" in that the Investment Company's pricing verification agent compares no fewer than two calculations of the intraday indicative value for the series of Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(B) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.<sup>4</sup>

Proposed Rule 14.11(k)(2)(C) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will make available daily to FINRA

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<sup>4</sup> As defined in Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30a.m and 4:00pm Eastern Time.

and the Exchange the portfolio holdings of each series of Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(D) provides that Authorized Participants (as defined in the Investment Company's Form N-1A filed with the SEC) creating or redeeming Managed Portfolio Shares will sign an agreement with an agent ("AP Representative") to establish a confidential account for the benefit of such Authorized Participant ("AP") that will deliver or receive all consideration to or from the issuer in a creation or redemption. An AP Representative may not disclose the consideration delivered or received in a creation or redemption.

Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the custodian, pricing verification agent, reporting authority, distributor, or administrator for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition, changes to such Investment Company's portfolio, and/or the consideration associated with creating or redeeming shares of a series of Managed Portfolio Shares, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing verification agent reporting authority, distributor, or

administrator or other entity will erect and maintain a “fire wall” between such AP Representative, custodian, pricing verification agent, reporting authority, distributor, administrator or other entity and personnel of the broker-dealer, broker-dealer affiliate, or the personnel who have knowledge of changes to the portfolio, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who have access to information regarding decisions on the Investment Company’s portfolio composition and/or changes to the portfolio must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.

Proposed Rule 14.11(k)(3)(A) defines the term “Managed Portfolio Share” as a security that (a) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified aggregate minimum number of shares equal to a Creation Unit, or multiples thereof, in return for a designated portfolio of securities (and/or an amount of cash) with a value equal to the next determined net asset value which the AP Representative will provide through a confidential account; and (c) when aggregated in the same specified aggregate number of shares equal to a Redemption Unit, or multiples thereof, may be redeemed at the request of an Authorized Participant (as defined in the Investment Company’s Form N-1A filed with the SEC), which Authorized Participant will be paid through a confidential account established for its benefit a

portfolio of securities and/or cash with a value equal to the next determined net asset value (“NAV”).<sup>5</sup>

Proposed Rule 14.11(k)(3)(B) defines the term “Verified Intraday Indicative Value” (“VIIV”) as estimated indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours by the Reporting Authority. The Verified Intraday Indicative Value is monitored by an Investment Company’s pricing verification agent responsible for processing Consolidated Tape best bid and offer quotation information into at least two “Calculation Engines,” each of which then calculates a separate intraday indicative value for comparison by the pricing verification agent based on the mid-point between the current NBB and NBO for the portfolio constituents of a series of Managed Portfolio Shares, one of which will be deemed by the Investment Company’s investment adviser as the Primary Intraday Indicative Value and the other the Secondary Intraday Indicative Value. The pricing verification agent will continuously compare the Primary Intraday Indicative Value against the Secondary Intraday Indicative Values to which the pricing verification agent has access. Where the pricing verification agent has verified the Primary Intraday Indicative Value as compared to the Secondary Intraday Indicative Value, the Primary Intraday Indicative Value will be used as the Verified Intraday Indicative Value and will

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<sup>5</sup> For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a “Fund” and shares of a series of Managed Portfolio Shares are generally referred to as the “Shares”.

be disseminated publicly during Regular Trading Hours for each series of Managed Portfolio Shares.<sup>6</sup>

Proposed Rule 14.11(k)(3)(C) defines the term “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an AP in return for a designated portfolio of securities (and/or an amount of cash) specified each day consistent with the Investment Company’s investment objectives and policies.

Proposed Rule 14.11(k)(3)(D) defines the term “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an AP in return for a portfolio of securities and/or cash.

Proposed Rule 14.11(k)(3)(E) defines the term “Reporting Authority” in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the issuer of a series of Managed Portfolio Shares as the official source for calculating and reporting information relating to such series, including, the NAV, the VIIV, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(k)(3)(F) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market

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<sup>6</sup> Each Calculation Engine is a computer that receives data from a real-time quote feed, calculates a price for the securities in the portfolio, and aggregates the weights of the securities in the portfolio to produce an intra-day indicative value.

information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.<sup>7</sup> Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors every second during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of

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<sup>7</sup> Proposed Rule 14.11(k)(4)(B)(iii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the value of the VIIV is no longer calculated or available to all market participants at the same time; (c) if the holdings of a series of Managed Portfolio Shares are not made available on a quarterly basis as required under the 1940 Act or are not made available to all market participants at the same time; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the series of Managed Portfolio Shares; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations for the issue of Managed Fund Shares are not continuously met; or (g) 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(k)(4)(B)(iii) provides that, upon notification to the Exchange by the Investment Company or its agent that: (i) the intraday indicative values calculated by more than one Calculation Engines differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; (ii) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one-second intervals, as required; or (iii) 10% or more of a series of Managed Portfolio Shares' portfolio holdings have become subject to a trading halt or otherwise do not have readily available market quotations, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values calculated by the Calculation Engines no longer

differ by more than 25 basis points for 60 seconds, that the Verified Intraday Indicative Value is being calculated and disseminated as required, or that less than 10% of the portfolio holdings are subject to a trading halt or otherwise do not have readily available market quotations. The Investment Company or its agent shall be responsible for monitoring that the Verified Intraday Indicative Value is being priced and disseminated as required and whether the intraday indicative values to be calculated by more than one Calculation Engines differ by more than 25 basis points for 60 seconds. In addition, if the Exchange becomes aware that the net asset value with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of a series of Managed Portfolio Shares are not made available on a quarterly basis as required under the 1940 Act, or such holdings are not made available 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 holdings are available to all market participants.

Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 14.11(k)(5), which relates to limitation of Exchange liability, 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 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 Managed Portfolio Shares; the VIIV; the amount of any dividend

equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio 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.

#### Key Features of Managed Portfolio Shares

While funds issuing Managed Portfolio Shares will be actively-managed and, to that extent, similar to Managed Fund Shares, Managed Portfolio Shares differ from Managed Fund Shares in the following important respects.<sup>8</sup> First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under Rule 14.11(i)<sup>9</sup> and for which a “Disclosed

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<sup>8</sup> The Exchange notes that these unique components of Managed Portfolio Shares were addressed in the Exemptive Order (specifically in the Application and Notice). Specifically, the Notice stated that the Commission “believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF’s secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.”

<sup>9</sup> The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016 (SR-BATS-2015-100) (order approving proposed rule change to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares).

Portfolio” is required to be disseminated at least once daily,<sup>10</sup> the portfolio for a series of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.<sup>11</sup> The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in “Creation Unit” or “Redemption Unit” size (as described below), the delivery of any portfolio securities in kind will be effected through a “Confidential Account” (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value - the VIIV - that reflects an estimated intraday value of a fund’s portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and will be widely disseminated by the Reporting Authority and/or one or more major market data vendors every second during Regular Trading Hours. The dissemination of the

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<sup>10</sup> BZX Rule 14.11(i)(3)(B) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of NAV at the end of the business day. Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

<sup>11</sup> A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940 Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. These forms are available to the public on the Commission’s website at [www.sec.gov](http://www.sec.gov).

VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Lead Market Makers (“LMMs”)<sup>12</sup> that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV as long as a VIIV is disseminated every second,<sup>13</sup> and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.<sup>14</sup> This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge of a fund’s underlying portfolio.<sup>15</sup>

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<sup>12</sup> As defined in Exchange Rule 11.8(e)(1)(B), the term LMM means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security.

<sup>13</sup> The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: “The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV.” See the Notice at 19.

<sup>14</sup> Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making correction where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock.

Dispersion trading is a hedged strategy designed to take advantage of relative value

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in creation units to APs only through an unaffiliated broker-dealer acting on an agency basis, as further described below. As such, on each “Business Day” (as defined below), before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the identities and quantities of portfolio securities that will form the basis for a Fund’s calculation of NAV per Share at the end of the Business Day, as well as the names and quantities of the instruments comprising a “Creation Basket” or the “Redemption Instruments” and the estimated “Balancing Amount” (if any) (as described below), for that day (as further described below). This information will permit APs to purchase “Creation Units” or redeem “Redemption Units” through an in-kind transaction with a Fund, as described below.

Using various trading methodologies such as statistical arbitrage, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund’s portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order with its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will

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differences in implied volatilities between an index and the component stocks of that index.

<sup>15</sup> APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

APs can engage in arbitrage by creating or redeeming Shares if the AP believes the Shares are overvalued or undervalued. As discussed above, the trading of a Fund's Shares and the creation or redemption of portfolio securities may bring the prices of a Fund's Shares and its portfolio assets closer together through market pressure.

The AP Representative's execution of a Creation Unit in a Confidential Account,<sup>16</sup> combined with the sale of Fund Shares in the secondary market by the AP, may create downward pressure on the price of Shares and/or upward pressure on the price of the portfolio securities, bringing the market price of Shares and the value of a Fund's portfolio securities closer together. Similarly, an AP could buy Shares and instruct the AP Representative to redeem Fund Shares and liquidate underlying portfolio securities in a Confidential Account. The AP's purchase of a Fund's Shares in the secondary market, combined with the liquidation of the portfolio securities from its Confidential Account by an AP Representative, may also create upward pressure on the price of Shares and/or downward pressure on the price of portfolio securities, driving the market price of Shares and the value of a Fund's portfolio securities closer together.

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<sup>16</sup> A Confidential Account is a restricted account owned by an AP and held at a broker-dealer who will act as an AP Representative (execution agent acting on agency basis) on their behalf. The restricted account will be established and governed via contract and used solely for creation and redemption activity, while protecting the confidentiality of the portfolio constituents. For reporting purposes, the books and records of the Confidential Account will be maintained by the AP Representative and provided to the appropriate regulatory agency as required. The Confidential Account will be liquidated daily, so that the account holds no positions at the end of day.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the "Registration Statement"), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. They will evaluate how their proxy performed in comparison to the price of a Fund's Shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

#### Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (i.e., a Confidential Account) with an AP

Representative,<sup>17</sup> which will be a bank or broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.<sup>18</sup> An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (the “Distributor”) with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP.

Each AP Representative will be given, before the commencement of trading each Business Day (defined below), the “Creation Basket” (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative, to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units.

In the case of a creation, the AP would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would be required, by the terms of the Confidential Account Agreement, to obfuscate the purchase by use of tactics such as breaking the purchase into multiple purchases and transacting in multiple

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<sup>17</sup> Each AP shall enter into its own separate Confidential Account with an AP Representative.

<sup>18</sup> In the event that an AP Representative is a bank, the bank will be required to have an affiliated broker-dealer to accommodate the execution of hedging transactions on behalf of the holder of a Confidential Account.

marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on Business Days.

In order to keep costs low and permit Funds to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Registration Statement, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and APs redeeming their Shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”) through the AP Representative in their Confidential Account.<sup>19</sup> On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the “Creation Basket.”

As noted above, each AP will be required to establish a Confidential Account with an AP Representative and transact with each Fund through that Confidential Account.<sup>20</sup> Therefore,

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<sup>19</sup> Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

<sup>20</sup> Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider

before the commencement of trading on each Business Day, the AP Representative of each AP will be provided, on a confidential basis and at the same time as other AP Representatives, with a list of the names and quantities of the instruments comprising a Creation Basket, as well as the estimated Balancing Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The instruments and cash that the purchaser is required to deliver in exchange for the Creation Units it is purchasing are referred to as the “Portfolio Deposit.”

APs will enter into an agreement with an AP Representative to open a Confidential Account, for the benefit of the AP. The AP Representative will serve as an agent between a Fund and each AP and act as a broker-dealer on behalf of the AP. Each day, the Custodian (defined below) will transmit the applicable Fund constituent file to each AP Representative and, acting on execution instructions from the AP,<sup>21</sup> the AP Representative may purchase or sell the securities currently held in a Fund’s portfolio for purposes of effecting in-kind creation and redemption activity during the day.<sup>22</sup>

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that has access to the identity and weightings of securities in a Fund’s Creation Basket or portfolio securities, such as a Fund’s Custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

<sup>21</sup> An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

<sup>22</sup> Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In

Other market participants will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, it will have to do so through an AP.

#### Placement of Purchase Orders

Each Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

The Distributor will furnish acknowledgements to those placing orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of each Fund is expected to be determined once each Business Day at a time determined by the Trust's Board of Directors ("Board"), currently anticipated to be as of the close of the regular trading session on the NYSE (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). Each Fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. To initiate a purchase of Shares, an AP must submit to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time.

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per Share purchased plus applicable "Transaction Fees," as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed ("Transmittal Date")

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addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.<sup>23</sup> The Distributor will maintain a record of Creation Unit purchases and will send out confirmations of such purchases upon receipt.<sup>24</sup>

#### Purchases of Shares — Secondary Market

Only APs will be able to acquire Shares at NAV directly from a Fund through the Distributor. The required payment must be transferred in the manner set forth in a Fund's SAI by the specified time on the Transmittal Date. These investors and others will also be able to purchase Shares in secondary market transactions at prevailing market prices.

#### Redemption

Beneficial Owners may sell their Shares in the secondary market. Alternatively, investors that own enough Shares to constitute a Redemption Unit or multiples thereof may redeem those Shares through the Distributor, which will act as the Trust's representative for redemption. The size of a Redemption Unit will be subject to change. Redemption orders for Redemption Units or multiples thereof must be placed by or through an AP.

#### Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP ("AP Redemption Order"). Each Fund will establish an Order Cut-Off Time for redemption

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<sup>23</sup> A "custom order" is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

<sup>24</sup> An AP Representative will provide information related to creations and redemption of Creation Units and Redemption Units to the Financial Industry Regulatory Authority ("FINRA") upon request.

orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.<sup>25</sup> Each AP will be required to open a Confidential Account with an AP

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<sup>25</sup> The terms of each Confidential Account will be set forth as an exhibit to the applicable

Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares<sup>26</sup> tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP.<sup>27</sup> The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash balancing amount to the AP through DTC.<sup>28</sup> The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for

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Participant Agreement, which will be signed by each AP. The terms of the Confidential Account will provide that the trust be formed under applicable state laws; the custodian may act as AP Representative of the Confidential Account; and the AP Representative will be paid by the AP a fee negotiated directly between the APs and the AP Representative(s).

<sup>26</sup> If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash balancing amount to compensate for the difference between the value of the securities delivered and the NAV.

<sup>27</sup> An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

<sup>28</sup> Under applicable provisions of the Internal Revenue Code, the AP is expected to be deemed a "substantial owner" of the Confidential Account because it receives distributions from the Confidential Account. As a result, all income, gain or loss realized by the Confidential Account will be directly attributed to the AP. In a redemption, the AP will have a basis in the distributed securities equal to the fair market value at the time of the distribution and any gain or loss realized on the sale of those Shares will be taxable income to the AP.

distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs and non-AP market participants will provide the AP Representative with a list of restricted securities applicable to the AP or non-AP market participants on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

To address odd lots, fractional shares, tradeable sizes or other situations where dividing securities is not practical or possible, the adviser may make minor adjustments to the pro rata portion of portfolio securities selected for distribution to each redeeming AP on such Business Day.

The Trust will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Trust and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash balancing amounts, and less the expenses of liquidation.

#### Pricing Calculations

According to the Notice, the pricing verification agent, on behalf of each Fund, will utilize two separate calculation engines to calculate intra-day indicative values (“Calculation Engines”), based on the mid-point between the current national best bid and offer disseminated by the Consolidated Quotation System (“CQS”) and Unlisted Trading Privileges Plan Securities Information Processor,<sup>29</sup> to provide the estimated real-time value on a per Share basis of each

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<sup>29</sup> According to the Exemptive Order, all Commission-registered exchanges and market centers send their trades and quotes to a central consolidator where the Consolidated Tape System (CTS) and CQS data streams are produced and distributed worldwide. See

Fund's holdings every second during the Exchange's Regular Trading Hours.<sup>30</sup> The Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for the applicable Fund's calculation of NAV at the end of the Business Day,<sup>31</sup> plus any cash in the portfolio, to the pricing verification agent for purposes of calculating the VIIV.<sup>32</sup>

According to the Notice, it is anticipated that each Calculation Engine could be using some combination of different hardware, software and communications platforms to process the CQS data. Different hardware platforms' operating systems could be receiving and calculating the CQS data inputs differently, potentially resulting in one Calculation Engine processing the indicative value in a different time slice than another Calculation Engine's system, thus processing values in different sequences. The processing differences between different

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<https://www.ctaplan.com/index>. Although there is only one source of market quotations, each Calculation Engine will receive the data directly and calculate an indicative value separately and independently from each other Calculation Engine.

<sup>30</sup> Dissemination of VIIV at one second intervals (as compared to every fifteen seconds for existing ETFs) helps to strike a balance between providing all investors with useable information at a rate that can be processed by retail investors, does not provide so much information so as to allow market participants to accurately determine the constituents, and their weightings, of the portfolio, can be accurately calculated and disseminated, and still provides professional traders with per second data.

<sup>31</sup> Trades made on the prior Business Day (T) will be booked and reflected in the NAV on the current Business Day (T+1). Thus, the VIIV calculated throughout the day will be based on the same portfolio as is used to calculate the NAV on that day.

<sup>32</sup> The Commission opined in the Notice that Precidian has addressed the concerns previously noted by the Commission with respect to reliance on the typical 15-second intraday indicative value for arbitrage purposes, by creating a VIIV that: (i) would be calculated and disseminated every second; and (ii) has precise and uniform parameters for calculation across all Funds, including that the Funds and their respective adviser take responsibility for its calculation. The Notice additionally highlights that arbitrage is further facilitated and those concerns are addressed because each Fund also will only invest in certain securities that trade on a U.S. exchange, contemporaneously with the Fund's Shares. Because the securities are exchange traded, Precidian asserted that the AP Representative would be able to promptly buy or sell the basket securities that it exchanges with the Funds on behalf of an AP upon receiving an order to enter into a creation or redemption transaction. The portfolio holdings' secondary market, moreover, would provide reliable price inputs for the VIIV calculation.

Calculation Engines will most likely be in the sub-second range. Consequently, the frequency of occurrence of out of sequence values among different Calculation Engines due to differences in operating system environments should be minimal. Other factors that could result in sequencing that is not uniform among the different Calculation Engines are message gapping, internal system software design, and how the CQS data is transmitted to the Calculation Engine. While the expectation is that the Primary Intraday Indicative Value and Secondary Intraday Indicative Value will generally match, having dual streams of redundant data that must be compared by the pricing verification agent will provide an additional check that the resulting VIIV is accurate.

According to the Notice, each Fund's Board has a responsibility to oversee the process of calculating an accurate VIIV and to make an affirmative determination, at least annually, that the procedures used to calculate the VIIV and maintain its accuracy are, in its reasonable business judgment, appropriate. These procedures and their continued effectiveness will be subject to the ongoing oversight of each Fund's chief compliance officer. The specific methodology for calculating the VIIV will be disclosed on each Fund's website. While each Fund will oversee the calculation of the VIIV, a Fund will utilize at two Calculation Engines.

#### Availability of Information

As noted above, a mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N-CSR under the 1940 Act, and is required to file its complete portfolio schedules for the first and third fiscal quarters on Form N-Q under the 1940 Act, within 60 days of the end of the quarter. Form N-Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or

downloaded from the Commission's website at [www.sec.gov](http://www.sec.gov).

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(k)(3)(B) and as described further below, will be widely disseminated by the Reporting Authority and/or one or more major market data vendors every second during Regular Trading Hours.

#### Dissemination of the VIIV

The VIIV, which is approximate value of each Fund's investments on a per Share basis, will be disseminated every second during Regular Trading Hours. The VIIV should not be viewed as a "real-time" update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day.

The VIIV for each Fund will be disseminated by the Reporting Authority and/or one or more major market data vendors in one-second intervals during Regular Trading Hours. Each Fund will adopt procedures governing the calculation of the VIIV. For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. If the adviser for a Fund determines that the mid-point of the bid/ask spread is inaccurate, a Fund will use fair value pricing based on the procedures described above. That fair value pricing will be carried over to the next day's VIIV until the first trade in that stock is reported unless the adviser deems a particular portfolio

security to be illiquid and/or the available ongoing pricing information unlikely to be reliable. In such case, that fact will be disclosed as soon as practicable on each Fund's website, including the identity and weighting of that security in a Fund's portfolio, and the impact of that security on VIIV calculation, including the fair value price for that security being used for the calculation of that day's VIIV.

By utilizing the mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and more accurate representation of the real time value of the underlying securities is provided to the market. Specifically, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. Using quotations rather than last sale information addresses concerns regarding the staleness of pricing information of less actively traded securities. Because quotations are updated more frequently than last sale information especially for inactive securities, the VIIV will be based on more current and accurate information. The use of quotations will also dampen the impact of any momentary spikes in the price of a portfolio security.

The pricing verification agent will continuously compare the Primary Intraday Indicative Value against a non-public Secondary Intraday Indicative Value to which the pricing verification agent has access. Where the pricing verification agent has verified the Primary Intraday Indicative Value as compared to the Secondary Intraday Indicative Value, the Primary Intraday Indicative Value will be used as the Verified Intraday Indicative Value and will be disseminated publicly during Regular Trading Hours for each series of Managed Portfolio Shares. Upon notification to the Exchange by the issuer of a series of Managed Portfolio Shares or its agent that the Primary Intraday Indicative Value and the Secondary Intraday Indicative Value differ by

more than 25 basis points for 60 seconds, the Exchange will halt trading as soon as practicable in a Fund until the discrepancy is resolved.<sup>33</sup> Each Fund's Board will review the procedures used to calculate the VIIV and maintain its accuracy as appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's website.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Portfolio Shares. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements.

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<sup>33</sup> Any small divergence of less than 25 basis points would be lower than the average bid/ask spread for actively managed ETFs, and relatively immaterial to the overall indicative value. A continuous deviation for sixty seconds could indicate an error in the feed or in a Calculation Engine.

If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

### Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, the Exchange will inform its members in an Information Circular (“Circular”) of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>34</sup> in general and Section 6(b)(5) of the Act<sup>35</sup> in particular in that it is designed to prevent fraudulent

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<sup>34</sup> 15 U.S.C. 78f.

and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that proposed Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the issuer of each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.<sup>36</sup> Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or one or more major market data

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<sup>35</sup> 15 U.S.C. 78f(b)(5).

<sup>36</sup> Proposed Rule 14.11(k)(4)(B)(iii) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants.

vendors every second during Regular Trading Hours. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the value of the Verified Intraday Indicative Value is no longer calculated or available to all market participants at the same time; (c) if the holdings of a series of Managed Portfolio Shares are not made available on a quarterly basis as required under the 1940 Act or are not made available to all market participants at the same time; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Securities and Exchange Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Securities and Exchange Commission to the Investment Company with respect to the series of Managed Portfolio Shares; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations for the issue of Managed Fund Shares are not continuously met; or (g) 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(k)(4)(B)(iii) provides that, upon notification to the Exchange by the Investment Company or its agent that (i) the Primary Intraday Indicative Value and Secondary Intraday Indicative Value, to be compared by the applicable Investment Company's pricing verification agent, differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV, or (ii) that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one-

second intervals, as required, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the intraday indicative values no longer differ by more than 25 basis points for 60 seconds or that the VIIV is being calculated and disseminated as required. Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus.

Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Proposed Rule 14.11(k)(2)(F) provides that, if an AP Representative, the Custodian or pricing verification agent for an Investment Company issuing Managed Portfolio Shares, or any other entity that has access to information concerning the composition and/or changes to such Investment Company’s portfolio, is registered as a broker-dealer or affiliated with a broker-dealer, such AP Representative, custodian, pricing verification agent or other entity will erect and maintain a “fire wall” between such AP Representative, custodian, pricing verification agent, or other entity and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio. Personnel who make decisions on the Investment Company's portfolio composition must be subject to procedures

designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio.<sup>37</sup>

The Exchange, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective even without daily disclosure of a fund's underlying portfolio.<sup>38</sup> The Exchange

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<sup>37</sup> The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that "Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act." The notice goes on to say that "an unaffiliated broker-dealer ("AP Representative") acting as an agent of another broker-dealer ("AP") will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF's Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP's orders to purchase or redeem the ETF's Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative." The Order goes on to say "For the foregoing reasons, it is found that granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act."

<sup>38</sup> The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: "The Commission believes that the alternative arbitrage mechanism

believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The LMMs also indicated that, as with some other new exchange- traded products,

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proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV." See the Notice at 19.

spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by LMMs were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly

by simultaneously taking positions in correlated assets<sup>39</sup> or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities.

Disclosure of a fund's investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV every second, should permit professional investors to engage easily in this type of hedging activity.<sup>40</sup>

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable,

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<sup>39</sup> Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

<sup>40</sup> With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

indicative real-time value for a Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.<sup>41</sup>

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for "free riding" or "front-running," while still providing investors with the advantages of the ETF structure.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of an issue of Managed Portfolio Shares that the NAV per share of a fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a fund's SAI, shareholder reports, and its Form N-CSR, Form N-Q and Form N-SAR. A fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR, Form N-Q and Form N-

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<sup>41</sup> The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

SAR may be viewed on-screen or downloaded from the Commission's website. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated every second throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the Shares.

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 purpose of the Act. The

Exchange notes that the proposed rule change, rather will facilitate the listing and trading of additional actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

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

The Exchange has neither solicited nor received written 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-047 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeBZX-2019-047. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-CboeBZX-2019-047 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

Vanessa A. Countryman  
Acting Secretary

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<sup>42</sup> 17 CFR 200.30-3(a)(12).