

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87759; File No. SR-CboeBZX-2019-047)

December 16, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment Nos. 4 and 5, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 4 and 5, to Adopt BZX Rule 14.11(k) to Permit the Listing and Trading of Managed Portfolio Shares

I. Introduction

On June 6, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares (“Shares”) of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules. The proposed rule change was published for comment in the Federal Register on June 25, 2019.³ On August 2, 2019, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On September 20, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On September 23, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86157 (June 19, 2019), 84 FR 29892.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 86157, 84 FR 39046 (August 8, 2019).

superseded the proposed rule change as amended by Amendment No. 1.⁶ On September 23, 2019, the Commission published Amendment No. 2 for notice and comment and instituted proceedings under Section 19(b)(2)(B) of the Exchange Act⁷ to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 2.⁸ On November 6, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 2.⁹ On November 21, 2019, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change as amended by Amendment No. 3.¹⁰ On December 4, 2019,

⁶ Amendments No. 1 and No. 2 are available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2019-047/srcboebzx2019047.htm>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Securities Exchange Act Release No. 87062, 84 FR 51193 (September 27, 2019).

⁹ Amendment No. 3 is available on the Commission's website at <https://www.sec.gov/comments/sr-cboebzx-2019-047/srcboebzx2019047-6402382-198409.pdf>.

¹⁰ In Amendment No. 4, the Exchange (a) revised the circumstances under which the Exchange will consider the suspension of trading in, and will commence delisting proceedings for, a series of Managed Portfolio Shares to include instances where the Exchange has halted trading in a series of Managed Portfolio Shares pursuant to proposed BZX Rule 14.11(k)(4)(B)(iii)(a), and such issue persists past the trading day in which it occurred; (b) revised its proposed rule pertaining to trading halts to provide that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares, and that trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable; (c) stated that the Exchange believes that the ability to access portfolio information for a series of Managed Portfolio Shares on an as needed basis pursuant to the proposed rule will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange; (d) discussed why the Exchange believes the proposed rule relating to trading halts is consistent with the Exchange Act and clarified how the Exchange would assess the need to halt trading upon receipt of certain information, or a request to halt trading, from the Investment Company (as defined below) issuing a series of Managed Portfolio Shares or its agent; and (e) made other technical, clarifying, and conforming changes. Amendment No. 4 is available on the

the Exchange filed partial Amendment No. 5 to the proposed rule change, which amended the proposed rule change as amended by Amendment No. 4.¹¹ The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment Nos. 4 and 5 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 4 and 5, on an accelerated basis.

II. Summary of the Exchange’s Description of the Proposed Rule Change, as Modified by Amendment Nos. 4 and 5¹²

The Exchange proposes to adopt new BZX Rule 14.11(k), which would govern the listing and trading of “Managed Portfolio Shares.”¹³

A. Key Features of Managed Portfolio Shares

The Exchange proposes to define the term “Managed Portfolio Share” as a security that:

(a) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s

Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2019-047/srcboebzx2019047-6463150-199308.pdf>.

¹¹ In partial Amendment No. 5, the Exchange clarified that the portfolio holdings for a series of Managed Portfolio Shares would be disclosed within at least 60 days following the end of every fiscal (rather than calendar) quarter. Partial Amendment No. 5 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2019-047/srcboebzx2019047-6511364-200228.pdf>.

¹² For a complete description of the Exchange’s proposal, as amended, see Amendment No. 4, supra note 10, and partial Amendment No. 5, supra note 11.

¹³ The Exchange states that the basis of the proposal is the amended application for exemptive relief under the Investment Company Act of 1940 (“1940 Act”) filed on April 4, 2019 (“1940 Act Application”). The notice for the 1940 Act Application was published on April 8, 2019 (“1940 Act Notice”) (File No. 812-14405) and a subsequent order granting exemptive relief under the 1940 Act to Precidian Funds LLC (“Precidian”), Precidian ETFs Trust and Precidian ETF Trust II, and Foreside Fund Services, LLC was issued on May 20, 2019 (“1940 Act Order” and, collectively, with the 1940 Act Application and the 1940 Act Notice, “Exemptive Relief”).

investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a Creation Unit,¹⁴ or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the “Authorized Participant” (as defined in the Investment Company’s Form N-1A filed with the Commission) through a Confidential Account;¹⁵ (c) when aggregated into a Redemption Unit,¹⁶ or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

According to the Exchange, while Investment Companies issuing Managed Portfolio Shares would be actively-managed, and in that respect would be similar to those issuing

¹⁴ Proposed BZX Rule 14.11(k)(3)(F) defines a “Creation Unit” as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

¹⁵ Proposed BZX Rule 14.11(k)(3)(D) defines a “Confidential Account” as an account owned by an Authorized Participant and held with an AP Representative (as defined below) on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

¹⁶ Proposed BZX Rule 14.11(k)(3)(G) defines a “Redemption Unit” as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

Managed Fund Shares,¹⁷ Managed Portfolio Shares would differ from Managed Fund Shares in the following material respects.

- Series of Managed Fund Shares are required to disseminate their “Disclosed Portfolio” at least once daily.¹⁸ By contrast, the portfolio for a series of Managed Portfolio Shares would be disclosed only quarterly.¹⁹
- In connection with the creation of Shares in Creation Units or the redemption of Shares in Redemption Units, the delivery or receipt of any portfolio securities in kind would be effected through an AP Representative²⁰ in a Confidential Account established for the benefit of the creating or redeeming Authorized Participant

¹⁷ Managed Fund Shares are Shares of actively-managed Investment Companies listed and traded under BZX Rule 14.11(i).

¹⁸ 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 net asset value (“NAV”) at the end of the business day. BZX Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio be disseminated at least once daily and be made available to all market participants at the same time.

¹⁹ The Exchange states that the portfolio of a series of Managed Portfolio Shares would be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. See Amendment No. 4, supra note 10, at 16.

²⁰ Proposed BZX Rule 14.11(k)(3)(C) defines an “AP Representative” as an unaffiliated broker-dealer with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants. Proposed BZX Rule 14.11(k)(3)(E) defines the “Creation Basket” as, on any given business day, the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

without disclosing the identity of the securities to the Authorized Participant. To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem Shares in Creation Units and Redemption Units to Authorized Participants only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to the relevant AP Representative the names and quantities of the instruments comprising a Creation Basket, i.e., the Deposit Instruments or “Redemption Instruments”, and the estimated “Balancing Amount” (if any),²¹ for that day (as further described below). This information will permit Authorized Participants to purchase Creation Units or redeem Redemption Units through an in-kind transaction with the fund, as described below.

- For each series of Managed Portfolio Shares, a “Verified Intraday Indicative Value” (“VIIV”)²² would be widely disseminated by a Reporting Authority²³

²¹ The Balancing Amount is the cash amount necessary for the applicable fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

²² Proposed BZX Rule 14.11(k)(3)(B) defines the “Verified Intraday Indicative Value” as the 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.

²³ Proposed BZX Rule 14.11(k)(3)(H) 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 Investment Company 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

and/or by one or more major market-data vendors every second during the Exchange's Regular Trading Hours.²⁴ The dissemination of the 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.²⁵

B. Proposed Listing Rules

The proposed listing rule 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 BZX Rule 14.11(k),²⁶ and that the Exchange will file separate proposals under Section 19(b) of the Exchange Act before the listing and trading Shares of a series of Managed Portfolio Shares.²⁷ Further, transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.²⁸

The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares and, as part of these surveillance procedures, the Investment Company's

Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

²⁴ As defined in BZX Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

²⁵ See Amendment No. 4, supra note 10, at 17.

²⁶ See proposed BZX Rule 14.11(k)(1). Proposed BZX Rule 14.11(k)(2) provides that BZX Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with BZX 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 BZX Rule 14.11(k)(2) also provides that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

²⁷ See proposed BZX Rule 14.11(k)(2)(A).

²⁸ See proposed BZX Rule 14.11(k)(2)(B).

investment adviser will, upon request by the Exchange or Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.²⁹

Moreover, according to the proposal, 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 of and/or changes to such Investment Company portfolio and/or the Creation Basket.³⁰ Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket.³¹

Furthermore, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation

²⁹ See proposed BZX Rule 14.11(k)(2)(C).

³⁰ See proposed BZX Rule 14.11(k)(2)(D).

³¹ See id.

Basket.³² And if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket.³³

Finally, proposed BZX Rule 14.11(k)(5) sets forth certain provisions relating to limitation of Exchange liability in connection with the issuance of Managed Portfolio Shares, and proposed BZX Rule 14.11(k)(6) sets forth provisions relating to prospectus delivery requirements under Section 24(d) of the 1940 Act.

Proposed Initial and Continued Listing Criteria

Proposed BZX Rule 14.11(k)(4)(A) sets forth initial listing criteria applicable to Managed Portfolio Shares. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (a) for each series, 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; (b) the Exchange will obtain a representation from the Investment Company that issues 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; and (c) all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.³⁴

³² See proposed BZX Rule 14.11(k)(2)(E).

³³ See id.

³⁴ Proposed BZX Rule 14.11(k)(3)(I) defines “Normal Market Conditions” as including, but 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 information; or force majeure type events such as natural or manmade disaster, act of

Proposed BZX Rule 14.11(k)(4)(B) sets forth continued listing criteria for Managed Portfolio Shares. First, as discussed above, the VIIV for Managed Portfolio Shares must be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and must be disseminated to all market participants at the same time.³⁵

In addition, the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX 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 for 30 or more consecutive trading days; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to proposed BZX Rule 14.11(k)(4)(B)(iii)(b) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to proposed BZX Rule 14.11(k)(4)(B)(iii)(b) and such issue persists past the trading day in which it occurred; (d) if the

God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

³⁵ See proposed BZX Rule 14.11(k)(4)(B)(i). The Exchange also proposes to amend BZX Rule 14.11(a) to state that any statements or representations regarding the VIIV specified in any filing to list a series of Managed Portfolio Shares shall constitute continued listing requirements for such securities listed on the Exchange.

Exchange has halted trading in a series of Managed Portfolio Shares pursuant to BZX Rule 14.11(k)(4)(B)(iii)(a) and such issue persists past the trading day in which it occurred; (e) 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 applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares; (f) if any of the continued listing requirements set forth in proposed BZX Rule 14.11(k) are not continuously maintained; (g) if any of the applicable Continued Listing Representations³⁶ for the issue of Managed Portfolio Shares are not continuously met; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.³⁷

Proposed BZX Rule 14.11(k)(4)(B)(iii) sets forth circumstances under which the Exchange may halt trading in Managed Portfolio Shares. The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares.³⁸ Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable, including: (a) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the portfolio; or (b) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present (any such halt pursuant to proposed BZX Rule 14.11(k)(4)(B)(iii)(a), a “Discretionary Halt”).³⁹

³⁶ For the definition of the term “Continued Listing Representation”, see infra note 60.

³⁷ See proposed BZX Rule 14.11(k)(4)(B)(ii).

³⁸ See proposed BZX Rule 14.11(k)(4)(B)(iii)(a).

³⁹ See id.

In addition, if the Exchange becomes aware that: (a) the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (b) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (c) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (d) such holdings are not made available to all market participants at the same time (except as otherwise permitted under the applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required (any such halt pursuant to proposed BZX Rule 14.11(k)(4)(B)(iii)(b), an “Availability of Information Halt”).⁴⁰

Finally, proposed BZX Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, Managed Portfolio Shares issued in connection with such entity will be removed from Exchange listing, and proposed BZX Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

C. Surveillance

As discussed above, proposed BZX 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, upon request, make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange represents that the

⁴⁰ See proposed BZX Rule 14.11(k)(4)(B)(iii)(b).

ability to access the information on an as needed basis will provide the Exchange with sufficient information to perform the necessary regulatory functions associated with listing and trading series of Managed Portfolio Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

The Exchange further represents 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. The Exchange states that trading of Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. In addition, the Exchange states that it will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent that it will advise the Exchange of any failure by a series of Managed Portfolio Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange represents that it will surveil for compliance with the continued listing requirements. If a series of Managed Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange represents that it will commence delisting procedures under BZX Rule 14.12.

The Exchange further states that it will implement real-time surveillances that monitor for the continued dissemination of the VIIV and that it will also have surveillances designed to alert Exchange personnel where Shares of a series of Managed Portfolio Shares are trading away from the VIIV.

The Exchange states that the Exemptive Relief restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S.

exchange, contemporaneously with the Shares, and in cash and cash equivalents.⁴¹ As such, the Exchange states that any equity instruments or futures held by a series of Managed Portfolio Shares operating under the Exemptive Relief or a substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange states that proposed BZX Rule 14.11(k)(2)(A) would require the Exchange to file separate proposals under Section 19(b) of the Exchange Act before listing and trading any series of Managed Portfolio Shares and any such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange’s surveillance procedures applicable to such series.

The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

D. Trading Halts

As discussed above, proposed BZX Rule 14.11(k)(4)(B)(iii) sets forth circumstances under which the Exchange may halt trading in a series of Managed Portfolio Shares, including Discretionary Halts and Availability of Information Halts. The Exchange states that the proposed Discretionary Halts provide the Exchange with the ability to halt trading in a series of Managed Portfolio Shares when it determines that trading in the Shares is inadvisable. This could be based on the Exchange’s own analysis of market conditions being detrimental to a fair and orderly market and/or information provided by the Investment Company or its agent. The Exchange

⁴¹ See Amendment No. 4, supra note 10, at 27-88 (citing to the 1940 Act Notice, supra note 13, at 12, n. 24).

states that there are certain circumstances related to the trading and dissemination of information related to the underlying holdings of a series of Managed Portfolio Shares, such as the extent to which trading is not occurring in the securities and/or financial instruments comprising the portfolio, that the Exchange may not be in a position to know or become aware of as expeditiously as the Investment Company or its agent. In addition, the Exchange notes that there are certain circumstances in which the Exemptive Relief provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares.⁴² The Exchange states that any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and that the Exchange retains sole discretion in determining whether trading should be halted. The Exchange further states that, upon receipt of information and/or a request from the Investment Company, the Exchange would consider the information and/or circumstances leading to the request as well as other factors both specific to such issue of Managed Portfolio Shares and the broader market in determining whether trading in the series of Managed Portfolio

⁴² Specifically, the Exemptive Relief provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (a) the intraday indicative values calculated by the calculation engine(s) differ by more than 25 basis points for 60 seconds in connection with pricing of the VIIV; or (b) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. See 1940 Act Application, supra note 13, at 22-23, 29. As described in the Exemptive Relief, each series of Managed Portfolio Shares would employ two separate calculation engines to provide two independently calculated sources of intraday indicative values, and a pricing verification agent to compare the two data streams from the calculation engines on a real time basis. See 1940 Act Application, supra note 13, at 22-23.

Shares is inadvisable and that halting trading is necessary in order to maintain a fair and orderly market.

With respect to the proposed Availability of Information Halt relating to dissemination of VIIV, the Exchange notes that the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate.⁴³ With respect to the proposed Availability of Information halts relating to dissemination of NAV and portfolio holdings, the Exchange states that such halts are generally consistent with, and designed to address the same concerns about asymmetry of information as, BZX Rule 14.11(i)(4)(iv), which relates to trading halts in Managed Fund Shares.⁴⁴ In addition, the Exchange states that the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio. It further states that when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading.

⁴³ See Amendment No. 4, *supra* note 10 at 45, n. 39 (citing to 1940 Application, *supra* note 13, at 4 and 1940 Act Notice, *supra* note 13, at 11).

⁴⁴ BZX Rule 14.11(i)(4)(iv) provides that “[i]f the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund 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 Disclosed Portfolio is available to all market participants.”

E. Availability of Information

The Exchange represents that Form N-PORT requires reporting of a series of Managed Portfolio Shares' complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end, and that investors can obtain a fund's Statement of Additional Information (SAI), its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. The Exchange represents that a series of Managed Portfolio Shares' SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

The Exchange represents that information regarding market price and trading volume of a series of Managed Portfolio Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and information regarding the previous day's closing price and trading volume information for a series of Managed Portfolio Shares will be published daily in the financial section of newspapers. Quotation and last sale information for a series of Managed Portfolio Shares will be available via the Consolidated Tape Association high-speed line. In addition, the VIIV will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals during Regular Trading Hours.

F. Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed BZX 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.

G. 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: (a) the procedures for purchases and redemptions of the Managed Portfolio Shares; (b) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Managed Portfolio Shares to customers; (c) how information regarding the VIIV is disseminated; (d) the requirement that members deliver a prospectus to investors purchasing newly issued Managed Portfolio Shares prior to or concurrently with the confirmation of a transaction; (e) trading information; and (f) that the portfolio holdings of the Managed Portfolio Shares are not disclosed on a daily basis.

In addition, the Circular will reference that the series of Managed Portfolio Shares is subject to various fees and expenses described in the applicable registration statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Circular will also disclose that the NAV for the Managed Portfolio Shares will be calculated after 4:00 p.m., Eastern Time each trading day.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange’s proposal to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares is consistent with the

Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.⁴⁵ In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 4 and 5, is consistent with Section 6(b)(5) of the Exchange Act,⁴⁶ which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Pursuant to the Exemptive Relief,⁴⁷ Managed Portfolio Shares would be required to publicly disclose the portfolio holdings information on a quarterly, rather than daily, basis, within at least 60 days following the end of every fiscal quarter. Although Managed Portfolio Shares would, in this regard, be different from other types of exchange-traded funds currently listed and traded on the Exchange, for reasons described below, the Commission believes that BZX Rule 14.11(k) is sufficiently designed to be consistent with the Exchange Act and to help prevent fraudulent and manipulative acts and practices and to maintain a fair and orderly market for Managed Portfolio Shares. Further, the Commission notes that the proposed listing and trading rules for Managed Portfolio Shares, where appropriate, are similar to existing Exchange rules relating to exchange-traded funds, including Managed Fund Shares.⁴⁸

⁴⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ See supra note 13.

⁴⁸ The proposed rules relating to limitation of liability (proposed BZX Rule 14.11(k)(5)), disclosures (proposed BZX Rule 14.11(k)(6)), termination (proposed BZX Rule 14.11(k)(4)(B)(iv)), and voting (proposed BZX Rule 14.11(k)(4)(B)(v)) are substantively similar or identical to existing provisions for Managed Fund Shares. See BZX Rule 14.11(i)(5), BZX Rule 14.11(i)(6), BZX Rule 14.11(i)(4)(B)(v), and BZX Rule 14.11(i)(4)(B)(vi), respectively.

The Commission finds that the Exchange's proposal contains adequate rules and procedures to govern the listing and trading of Managed Portfolio Shares on the Exchange. Prior to listing and/or trading on the Exchange, the Exchange must file a separate proposed rule change pursuant to Section 19(b) of the Exchange Act for each series of Managed Portfolio Shares.⁴⁹ All such securities listed and/or traded under proposed BZX Rule 14.11(k) will be subject to the full panoply of BZX rules and procedures that currently govern the trading of equity securities on the Exchange.

For the initial listing of each series of Managed Portfolio Shares under proposed BZX Rule 14.11(k), the Exchange must establish a minimum number of Managed Portfolio Shares required to be outstanding at the commencement of trading. In addition, the Exchange must obtain a representation from the issuer of Managed Portfolio Shares that the NAV per share will be calculated daily and that the NAV will be made available to all market participants at the same time. Moreover, all Managed Portfolio Shares must have a stated investment objective, which must be adhered to under Normal Market Conditions. These requirements are identical to the initial listing requirements that currently apply to Managed Fund Shares.⁵⁰

Although the portfolio holdings of the Managed Portfolio Shares are not publicly disclosed on a daily basis, the Commission believes that the proposed continued listing standards and trading rules under proposed BZX Rule 14.11(k) are adequate to ensure transparency of key values and information regarding the securities. The Commission notes that, for continued listing of each series of Managed Portfolio Shares, the VIIV will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one second intervals

⁴⁹ See proposed BZX Rule 14.11(k)(2)(A).

⁵⁰ See BZX Rule 14.11(i)(4)(A).

during Regular Trading Hours, and will be disseminated to all market participants at the same time. Further, transactions in Managed Portfolio Shares would be permitted only during Regular Trading Hours, when one second VIIVs would be available. In addition, like all other registered management investment companies, each series of Managed Portfolio Shares would be required to publicly disclose its portfolio holdings information on a quarterly basis, within at least 60 days following the end of every fiscal quarter.⁵¹ Moreover, the Exchange represents that a series of Managed Portfolio Shares' Statement of Additional Information and shareholder reports will be available for free upon request from the Investment Company, and that those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

The Commission finds that the Exchange's rules with respect to trading halts under proposed BZX Rule 14.11(k) should also help ensure the availability of key values and information relating to Managed Portfolio Shares. For instance, if the Exchange becomes aware that the VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required, the Exchange will halt trading in such series until the VIIV is available as required.⁵² If the interruption of the VIIV persists past the trading day in which it occurred or the VIIV is no longer available, the Exchange will consider the suspension of trading in the series of Managed Portfolio Shares, and will commence delisting proceedings under BZX Rule 14.12.⁵³ In addition, if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not being disseminated to all market participants at the same

⁵¹ See proposed BZX Rule 14.11(k)(3)(A). See also Rules 30e-1; 30d-1; and 30b1-5 under the 1940 Act.

⁵² See proposed BZX Rule 14.11(k)(4)(B)(iii)(b).

⁵³ See proposed BZX Rule 14.11(k)(4)(B)(ii)(b).

time, the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not available to all market participants at the same time (except as otherwise permitted under the applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), the Exchange will halt trading until the NAV or the holdings are available as required.⁵⁴ If any of these issues persists past the trading day in which it occurs, the Exchange will consider the suspension of trading in the series of Managed Portfolio Shares, and will commence delisting proceedings under BZX Rule 14.12.⁵⁵

The Commission also finds that the Exchange's rules with respect to trading halts and suspensions under proposed BZX Rule 14.11(k) are designed to help maintain a fair and orderly market. According to the proposal, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Further, trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable.⁵⁶ These may include the extent to which trading is not occurring in the securities and/or the financial instruments comprising the portfolio, or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. If such issue persists past the trading day in which it occurred, the Exchange will consider the suspension of trading in, and will commence delisting proceedings for, a series of Managed Portfolio Shares.

⁵⁴ See proposed BZX Rule 14.11(k)(4)(B)(iii)(b).

⁵⁵ See proposed BZX Rule 14.11(k)(4)(B)(ii)(c).

⁵⁶ See proposed BZX Rule 14.11(k)(4)(B)(iii)(a).

Other provisions of the Exchange’s rule pertaining to suspension are substantially consistent with provisions that currently exist for Managed Fund Shares. Those provisions state that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under BZX Rule 14.12 for, a series of Managed Portfolio Shares if: (a) 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 the Managed Portfolio Shares for 30 or more consecutive trading days;⁵⁷ (b) the Investment Company issuing the Managed Portfolio Shares has failed to file any required filings with the Commission, or if the Exchange becomes aware that the Investment Company is not in compliance with the conditions of any applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares;⁵⁸ (c) any of the continued listing requirements set forth in BZX Rule 14.11(k) are not continuously maintained;⁵⁹ (d) any of the applicable Continued Listing Representations⁶⁰ for the issue of Managed Portfolio Shares are not continuously met;⁶¹ or (e)

⁵⁷ See proposed BZX Rule 14.11(k)(4)(B)(ii)(a).

⁵⁸ See proposed BZX Rule 14.11(k)(4)(B)(ii)(e).

⁵⁹ See proposed BZX Rule 14.11(k)(4)(B)(ii)(f).

⁶⁰ As proposed to be amended, BZX Rule 14.11(a) defines “Continued Listing Representations” as any of the statements or representations 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, intraday indicative values, and VIIV (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (as defined in BZX Rule 14.11(a)).

⁶¹ See proposed BZX Rule 14.11(k)(3)(B)(ii)(g).

such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings of the Managed Portfolio Shares on the Exchange inadvisable.⁶²

Finally, the Commission believes that the requirements of proposed BZX Rule 14.11(k) are consistent with the Exchange Act and, more specifically, are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Managed Portfolio Shares would not publicly disclose on a daily basis information pertaining to the portfolio holdings, it is vital that such information be kept confidential and not be subject to misuse. Accordingly, to help ensure that the portfolio information be kept confidential and the Shares not be susceptible to fraud or manipulation, proposed BZX Rule 14.11(k)(2)(D) requires 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 must erect a “fire wall” between such investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company’s portfolio and/or the Creation Basket. Further, the Rule also requires that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. In addition, proposed BZX Rule 14.11(k)(2)(E) provides that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the

⁶² See proposed BZX Rule 14.11(k)(3)(B)(ii)(h).

Investment Company's portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. The proposed rules also require that the Exchange will implement and maintain surveillance procedures. Finally, to ensure that the Exchange has the appropriate information to monitor and surveil its market, BZX Rule 14.11(k) requires that the Investment Company's investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.⁶³

For the reasons discussed above, the Commission finds that proposed BZX Rule 14.11(k) for Managed Portfolio Shares is consistent with Section 6(b)(5) of the Exchange Act.

IV. Solicitation of Comments on Amendment Nos. 4 and 5 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 4 and 5 are consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

⁶³ See proposed BZX Rule 14.11(k)(2)(C).

- Send an e-mail to 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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-047, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 4 and 5

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 4 and 5, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 4 and 5 in the Federal Register. In Amendment No. 4, the Exchange revised the circumstances under which it proposed to halt trading in, consider the suspension of trading in, and commence delisting proceedings for, a series of Managed Portfolio Shares. Amendment Nos. 4 and 5 also provide other clarifications and additional information to the proposed rule change.⁶⁴ The changes and additional information in Amendment Nos. 4 and 5 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁶⁵ to approve the proposed rule change, as modified by Amendment Nos. 4 and 5, on an accelerated basis.

⁶⁴ See supra notes 10 and 11.

⁶⁵ 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act⁶⁶ that the proposed rule change (SR-CboeBZX-2019-047), as modified by Amendment Nos. 4 and 5, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁷

J. Matthew DeLesDernier
Assistant Secretary

⁶⁶ 15 U.S.C. 78s(b)(2).

⁶⁷ 17 CFR 200.30-3(a)(12).