

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88570; File No. SR-CboeBYX-2020-011)

April 6, 2020

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Expand the Trading Hours Applicable to Managed Portfolio Shares to Include All Trading Sessions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 31, 2020, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to expand the trading hours applicable to Managed Portfolio Shares to include all trading sessions instead of just Regular Trading Hours.³ The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ As defined in Rule 1.5(w), the term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time.

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 adopted new Rule 14.11 for the purpose of permitting trading, pursuant to unlisted trading privileges,⁴ of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company,⁵ on January 21, 2020.⁶ Rule

⁴ As noted in Exchange Rule 14.1(a), the Exchange does not list any Equity Securities, as defined in Rule 14.1(a). Therefore, the provisions of Rules 14.2 through 14.11 only allow the trading of such Equity Securities pursuant to unlisted trading privileges.

⁵ As defined in Rule 14.11(c)(1), the term "Managed Portfolio Share" means 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 investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit (as defined in Rule 14.11(c)(6)), 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; (c) when aggregated into a Redemption Unit (as defined in Rule 14.11(c)(7)), 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 (as defined in Rule 14.11(c)(4)) 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.

⁶ See Securities Exchange Act Release No. 88112 (February 3, 2020), 85 FR 7352 (February 7, 2020) (SR-CboeBYX-2020-003).

14.11(b)(2) currently provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours. On March 23, 2020, Cboe BZX Exchange, Inc. (“BZX”), the listing market for Managed Portfolio Shares, amended its rules to allow Managed Portfolio Shares to trade during all sessions.⁷ Accordingly, the Exchange is now proposing to change rule 14.11(b)(2) in order to allow for trading in Managed Portfolio Shares during all trading sessions on the Exchange.

The proposed amendment would allow trading in Managed Portfolio Shares during all sessions including the Early Trading Session,⁸ the Pre-Opening Session,⁹ Regular Trading Hours, and the After Hours Trading Session.¹⁰ The Exchange notes that Managed Portfolio Shares are currently the only product-type that is not available for trading during all trading sessions on the Exchange. As such, this proposal would allow Managed Portfolio Shares to be traded, pursuant to unlisted trading privileges, on the Exchange in a manner identical to all other products traded on the Exchange.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the

⁷ See Securities Exchange Act Release No. 88468 (March 25, 2020) 85 FR 17908 (March 31, 2020) (SR-CboeBZX-2020-028).

⁸ As defined in Rule 1.5(ee), the term “Early Trading Session” shall mean the time between 7:00 a.m. and 8:00 a.m. Eastern Time.

⁹ As defined in Rule 1.5(r), the term “Pre-Opening Session” shall mean the time between 8:00 a.m. and 9:30 a.m. Eastern Time.

¹⁰ As defined in Rule 1.5(c), the term “After Hours Trading Session” shall mean the time between 4:00 p.m. and 8:00 p.m. Eastern Time

¹¹ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the Exchange believes that allowing Managed Portfolio Shares to trade during all trading sessions on the Exchange will remove impediments to and perfect a national market system by reducing the complexity and potential investor confusion that could be associated with limiting the trading hours for one product type. Furthermore, the proposal is consistent with a recent change made by the listing market for Managed Portfolio Shares, BZX, and thus would eliminate complexity and potential investor confusion related to which platforms are offering trading in Managed Portfolio Shares at different times of the day.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposed rule change, rather, will facilitate the trading of Managed Portfolio Shares in a manner that is consistent with other product types traded on the Exchange as well as on other trading platforms, enhancing competition among market participants, product types, and platforms, to the benefit of investors and the marketplace.

¹² 15 U.S.C. 78f(b)(5).

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the operative delay would allow trading of Managed Portfolio Shares on the Exchange during all trading sessions as soon as possible, making the treatment of Managed Portfolio Shares consistent with all other product types as well as the listing market, and reducing confusion and complexity associated with Managed Portfolio Shares. In addition,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

the Exchange states that the proposal raises no novel or unique issues in that it would allow Managed Portfolio Shares to trade in a manner identical to all other products traded on the Exchange and consistent with the exemptive relief granted by the Commission. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹⁷

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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. Please include File Number SR-CboeBYX-2020-011 on the subject line.

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeBYX-2020-011. 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-CboeBYX-2020-011 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).