

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90530; File No. SR- CboeBZX-2020-085)

November 30, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF Under Rule 14.11(m) (Tracking Fund Shares)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 24, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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

The Exchange proposes a rule change to list and trade shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF (each a “Fund” and, collectively, the “Funds”), each a series of the Fidelity Covington Trust (the “Trust”), under Rule 14.11(m), Tracking Fund Shares. The shares of each Fund are referred to herein as the “Shares.”

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

¹ 15 U.S.C. 78s(b)(1).

² 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 list and trade shares of each Fund pursuant to Rule 14.11(m), Tracking Fund Shares,³ which are securities issued by an actively managed open-end management investment company.⁴ The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

³ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “1940 Act”) 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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

The Shares will be offered by the Trust, which is organized as a business trust under the laws of The Commonwealth of Massachusetts. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N-1A with the Commission.⁵ Fidelity Management & Research Company or FMR Co., Inc. (the “Adviser”) will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with numerous broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund’s portfolio and Tracking Basket.⁶ Personnel who make decisions on a Fund’s portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio⁷ and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material non-public information

⁵ The Trust is registered under the 1940 Act. On September 24, 2020, the Trust filed a registration statement on Form N-1A relating to the Funds (File No. 811-07319) (the “Registration Statement”). The descriptions of the Funds and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief under the Investment Company Act of 1940 (15 U.S.C. 80a-1) to Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Application,” “Notice,” and “Order,” respectively, and, collectively, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (the Order).

⁶ As defined in Rule 14.11(m)(3)(E), the term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares.

⁷ As defined in Rule 14.11(m)(3)(B), the term “Fund Portfolio” means 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 at the end of the business day.

regarding such portfolio and/or Tracking Basket. The Funds' sub-advisers, FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited (each a "Sub-Adviser" and, collectively, the "Sub-Advisers"), are not registered as a broker-dealer but are affiliated with numerous broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Tracking Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, has erected and will 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 Fund Portfolio or Tracking Basket. Each Fund intends to qualify each

year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.⁸ A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

Fidelity Growth Opportunities ETF

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.⁹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG")¹⁰ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁸ See 17 CFR 240.10A-3.

⁹ Pursuant to the Exemptive Relief, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares ("foreign common stocks"), exchange-traded preferred stocks, exchange-traded American Depositary Receipts ("ADRs"), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁰ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may

The Fund seeks long-term growth of capital. In order to achieve its investment objective, the Fund typically invests primarily in equity securities of domestic and foreign issuers that the Adviser believes have above-average growth potential, as determined using fundamental analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions.

Fidelity Magellan ETF

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹²

The Fund seeks long-term growth of capital. In order to achieve its investment objective, the Fund typically invests primarily in equity securities of domestic and foreign issuers that, based on fundamental analysis of factors such as each issuer's financial condition and industry

trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹¹ Pursuant to the Exemptive Relief, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

position, as well as market and economic conditions, the Adviser believes are “growth” stocks or “value” stocks or both.

Fidelity Real Estate Investment ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹³ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”)¹⁴ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks above-average income and long-term capital growth, consistent with reasonable investment risk. In order to achieve its investment objective, the Fund normally invests at least 80% of assets in securities of companies principally engaged in the real estate industry and other real estate related investments. Such investments are primarily in equity securities of domestic and foreign issuers based on fundamental analysis of factors such as each issuer’s financial condition and industry position, as well as market and economic conditions.

Fidelity Small-Mid Cap Opportunities ETF

¹³ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁴ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹⁵ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group ("ISG")¹⁶ or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks long-term growth of capital. In order to achieve its investment objective, the Fund normally invests at least 80% of assets in securities of companies with small to medium market capitalizations (which, for purposes of this fund, are those companies with market capitalizations similar to companies in the Russell 2500™ Index) by investing in domestic and foreign issuers that, based on fundamental analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions, the Adviser believes are "growth" stocks or "value" stocks or both.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make

¹⁵ Pursuant to the Exemptive Relief, the Fund's permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁶ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

trading in the Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.¹⁷ As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs. The Exchange notes that the Tracking Basket methodology used by the Fund is substantively identical to a proposal previously approved by the Commission.¹⁸ ETFs selected for inclusion in the Tracking Basket will be

¹⁷ With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

¹⁸ See Tracking Fund Shares Approval Order.

consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Tracking Basket without revealing a Fund's exact positions.¹⁹ Intraday pricing information for all constituents of the Tracking Basket that are exchange-traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a covariance matrix based on an

¹⁹ The set of ETFs that are "representative" to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. ETFs may constitute no more than 50% of the Tracking Basket's assets.

optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge: tracking error (standard deviation of return differentials between the Tracking Basket and the Fund), turnover cost, and basket creation cost.²⁰ Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.²¹ For example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the

²⁰ Tracking error measures the deviations between the Tracking Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Tracking Basket as a hedge.

²¹ The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) the cost to purchase securities constituting the Tracking Basket, *i.e.*, the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.*, the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

The Exchange believes that the particular instruments that may be included in each of the Fund's respective Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.²² In addition, each Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide authorized participants, arbitrageurs, and certain other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure

²² The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ in particular in that it is 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 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.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio will be publicly available at all times. Each Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each Fund will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV.

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(5).

The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Funds will continue to comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the order approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁵ All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for

²⁵ See supra note 10.

compliance with the continued listing requirements. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the 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 the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. 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. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(D), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing

and trading the 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.

In addition, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's 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 also notes that the Exemptive Relief provides that the Funds will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

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 CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

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. Rather, the Exchange notes that the proposed rule change will facilitate the listing of several new series of actively-managed exchange-traded product, thus enhancing 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

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 Act²⁶ and Rule 19b-4(f)(6) thereunder.²⁷

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

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 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.

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-CboeBZX-2020-085 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-2020-085. 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-2020-085 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.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).