

Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

(6) The Exchange represents that, for initial and continued listing, the Fund will be in compliance with Rule 10A-3²⁴ under the Act, as provided by NYSE Arca Rule 5.3-E.

(7) Under normal market conditions, at least 80% of the Fund's net assets must be invested in Municipal Securities.

(8) The Fund's investments will be consistent with its investment goal and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

(9) All ETFs will be listed and traded in the U.S. on a national securities exchange. While the Fund may invest in inverse ETFs, the Fund will not invest in leveraged (*e.g.*, 2X, -2X, 3X or -3X) ETFs.

(10) The Fund's portfolio will meet all the requirements set forth in Commentary .01 to NYSE Arca Equities Rule 8.600-E except for those set forth in Commentary .01(b)(1).

(11) Under normal market conditions, except for periods of high cash inflows or outflows, the Fund will satisfy the following criteria in lieu of the criteria in Commentary .01(b)(1): (a) The Fund will have a minimum of 20 non-affiliated issuers; (b) no single municipal securities issuer will account for more than 10% of the weight of the Fund's portfolio; (c) no individual bond will account for more than 5% of the weight of the Fund's portfolio; (d) the Fund will limit its investments in Municipal Securities of any one state to 20% of the Fund's total assets and will be diversified among issuers in at least 10 states; and (e) the Fund will be diversified among a minimum of five different sectors of the municipal bond market.

(12) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser, consistent with Commission guidance. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and the Fund will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets may include securities subject to contractual or other restrictions on resale and other instruments that lack readily available

markets as determined in accordance with Commission staff guidance.

(13) Each Fund's investments will be consistent with its investment objective and will not be used to provide multiple returns of a benchmark or to produce leveraged returns.

The Exchange also represents that all statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Fund on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.²⁵ If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5-E(m).

The Commission believes that the Exchange's initial and continued listing requirements, combined with the Fund's investment criteria that would apply to Municipal Securities in the portfolio, are designed to mitigate the potential for price manipulation of the Shares. This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600-E to be listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁶ and the rules and regulations thereunder applicable to a national securities exchange.

²⁵ The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Securities Exchange Act Release No. 78005 (Jun. 7, 2016), 81 FR 38247 (Jun. 13, 2016) (SR-BATS-2015-100). In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of a fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

²⁶ 15 U.S.C. 78f(b)(5).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NYSEArca-2017-90), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority,²⁸

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82168; File No. SR-CBOE-2017-057]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Amended, To Amend Interpretation and Policy .07 of Exchange Rule 4.11, Position Limits, To Increase the Position Limits for Options on Certain Exchange Traded Products

November 29, 2017.

I. Introduction

On August 15, 2017, Cboe Exchange, Inc. ("Exchange" or "Cboe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Interpretation and Policy .07 of Exchange Rule 4.11, Position Limits, to increase the position limits for options on the following exchange traded funds ("ETFs") and exchange traded note ("ETN"): iShares China Large-Cap ETF ("FXI"), iShares MSCI EAFE ETF ("EFA"), iShares MSCI Emerging Markets ETF ("EEM"), iShares Russell 2000 ETF ("IWM"), iShares MSCI Brazil Capped ETF ("EWZ"), iShares 20+ Year Treasury Bond Fund ETF ("TLT"), iPath S&P 500 VIX Short-Term Futures ETN ("VXX"), PowerShares QQQ Trust ("QQQ"), and iShares MSCI Japan ETF ("EW"). The proposed rule change was published for comment in the **Federal Register** on August 31, 2017.³ On

²⁷ 15 U.S.C. 78s(b)(2)

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 81483 (August 25, 2017), 82 FR 41457 ("Notice").

October 11, 2017, pursuant to Section 19(b)(2) of the 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 approve or disapprove the proposed rule change.⁵ The Commission received no comments regarding the proposal. On November 22, 2017, the Exchange submitted Amendment No. 1 to the proposed rule change.⁶ The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁷ to determine whether to approve or disapprove the proposed rule change, as amended.

II. Description of the Proposal, as Amended

Currently, position limits for options on ETFs and ETNs, such as those subject to this proposal, are determined pursuant to Exchange Rule 4.11, and, with certain exceptions, vary according to the number of outstanding shares and past six-month trading volume of the underlying stocks, ETFs, or ETNs. Options on the securities with the largest numbers of outstanding shares and trading volume have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; and stocks, ETFs, and ETNs with fewer outstanding shares and lower trading volume have position limits of 200,000, 75,000, 50,000, or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. Options on FXI, EFA, EWZ, TLT, VXX, and EWJ are currently subject to the standard position limit of 250,000 contracts as set forth in Exchange Rule 4.11.⁸ Interpretation and Policy .07 of

Exchange Rule 4.11 currently sets forth separate position limits for options on certain ETFs, including 500,000 contracts for options on EEM and IWM, and 900,000 contracts for options on QQQQ.⁹

The purpose of the proposed rule change, as amended, is to amend Interpretation and Policy .07 to Exchange Rule 4.11 to increase the position and exercise limits for options on FXI, EFA, EWZ, TLT, VXX, and EWJ to from 250,000 contracts to 500,000 contracts.¹⁰ The Exchange further proposes to amend Interpretation and Policy .07 to Exchange Rule 4.11 to increase the position limits for options on EEM and IWM from 500,000 contracts to 1,000,000 contracts, and to increase the position limits for options on QQQQ from 900,000 contracts to 1,800,000 contracts.¹¹ The Exchange states its belief that increasing position limits for the options subject to this proposal will lead to a more liquid and competitive market environment for

including countries in Europe, Australasia and the Far East, excluding the U.S. and Canada.” *Id.* According to the Exchange, EWZ tracks the performance of the MSCI Brazil 25/50 Index, which is composed of shares of large and mid-size companies in Brazil and TLT tracks the performance of ICE U.S. Treasury 20+ Year Bond Index, which is composed of long-term U.S. Treasury bonds. *Id.* The Exchange also states that VXX tracks the performance of S&P 500 VIX Short-Term Futures Index Total Return. *Id.* According to the Exchange, “the Index is designed to provide access to equity market volatility through CBOE Volatility Index futures. The Index offers exposure to a daily rolling long position in the first and second month VIX futures contracts and reflects market participants’ views of the future direction of the VIX index at the time of expiration of the VIX futures contracts comprising the Index.” *Id.* The Exchange also states that EWJ tracks the MSCI Japan Index, which tracks the performance of large and mid-sized companies in Japan. *Id.*

⁹ The Exchange states that EEM tracks the performance of the MSCI Emerging Markets Index, which is composed of approximately 800 component securities. According to the Exchange, the MSCI Emerging Markets Index “consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.” *Id.* The Exchange also states that IWM tracks the performance of the Russell 2000 Index, which is composed of 2,000 small-cap domestic stocks, and QQQQ tracks the performance of the Nasdaq-100 Index, which is composed of 100 of the largest domestic and international nonfinancial companies listed on the Nasdaq Stock Market LLC. *Id.*

¹⁰ Pursuant to Exchange Rule 4.12, Interpretation and Policy .02, which is not being amended by the proposed rule change, the exercise limits for FXI, EFA, EWZ, TLT, VXX, and EWJ options would be similarly increased.

¹¹ Pursuant to Exchange Rule 4.12, Interpretation and Policy .02, which is not being amended by the proposed rule change, the exercise limits for EEM, IWM, and QQQQ options would be similarly increased. The Exchange also proposes to make non-substantive corrections to the names of IWM and EEM in Rule 4.11, Interpretation and Policy .07.

these options that will benefit customers interested in this product.¹²

In support of its proposal to increase the position limits for QQQQ to 1,800,000 contracts, the Exchange compared the trading characteristics of QQQQ to that of the SPDR S&P 500 ETF (“SPY”), which currently has no position limits.¹³ The Exchange states that the average daily trading volume through August 14, 2017 for QQQQ was 26.25 million shares compared to 64.63 million shares for SPY.¹⁴ The total shares outstanding for QQQQ were 351.6 million compared to 976.23 million for SPY.¹⁵ The fund market cap for QQQQ was \$50,359.7 million compared to \$240,540 million for SPY.¹⁶

In support of its proposal to increase the position limits for EEM and IWM from 500,000 contracts to 1,000,000 contracts, the Exchange compared the trading characteristics of EEM and IWM to that of QQQQ, which currently has a position limit of 900,000 contracts.¹⁷ The Exchange states that the average daily trading volume through July 31, 2017 for EEM was 52.12 million shares and IWM was 27.46 million shares compared to 26.25 million shares for QQQQ.¹⁸ The total shares outstanding for EEM were 797.4 million and for IWM were 253.1 million compared to 351.6 million for QQQQ.¹⁹ The fund market cap for EEM was \$34,926.1 million and IWM was \$35,809.1 million compared to \$50,359.7 million for QQQQ.²⁰

In support of its proposal to increase the position limits for FXI, EFA, EWZ, TLT, VXX, and EWJ from 250,000 contracts to 500,000 contracts, the Exchange compared the trading characteristics of FXI, EFA, EWZ, TLT, VXX, and EWJ to that of EEM and IWM, both of which currently have a position limit of 500,000 contracts.²¹ The Exchange states that the average daily

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 81853, 82 FR 48300 (October 17, 2017). The Commission designated November 29, 2017 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

⁶ In Amendment No. 1, the Exchange provided additional justification and analysis in support of the proposal, which is summarized below. The full text of Amendment No. 1 has been placed in the public comment file for SR-CBOE-2017-57 and is available at: <https://www.sec.gov/comments/sr-cboe-2017-057/cboe2017057-2715774-161526.pdf>.

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ See Notice, *supra* note 3, at 41457. The Exchange states that FXI tracks the performance of the FTSE China 50 Index, which is composed of the 50 largest Chinese stocks and EFA tracks the performance of MSCI EAFE Index, which has over 900 component securities. *Id.* at 41458. The Exchange also states that the MSCI EAFE Index “is designed to represent the performance of large and mid-cap securities across 21 developed markets,

¹² See Notice, *supra* note 3, at 41459.

¹³ See *id.* at 41458. See also Exchange Rule 4.11, Interpretation and Policy .07. The Commission notes that the lack of position limits for SPY is currently subject to a pilot program. See Securities Exchange Act Release Nos. 67937 (September 27, 2012), 77 FR 60489 (October 3, 2012) (SR-CBOE-2012-091) (eliminating position and exercise limits for SPY options on a pilot basis); and 81017 (June 26, 2017), 82 FR 29960 (June 30, 2017) (SR-CBOE-2017-050) (extending the SPY pilot program to July 12, 2018).

¹⁴ See Notice, *supra* note 3, at 41458.

¹⁵ See *id.*

¹⁶ See *id.*

¹⁷ See *id.* See also Exchange Rule 4.11, Interpretation and Policy .07.

¹⁸ See Notice, *supra* note 3, at 41458–59.

¹⁹ See *id.* at 41459.

²⁰ See *id.*

²¹ See *id.* See also Exchange Rule 4.11, Interpretation and Policy .07.

trading volume through July 31, 2017 for FXI was 15.08 million shares, EFA was 19.42 million shares, EWZ was 17.08 million shares, TLT was 8.53 million shares, VXX was 55.04 million shares, and EWJ was 6.06 million shares compared to 52.12 million shares for EEM and 27.46 million shares for IWM.²² The total shares outstanding for FXI was 78.6 million, EFA was 1178.4 million, EWZ was 159.4 million, TLT was 60 million, VXX was 96.7 million, and EWJ was 303.6 million compared to 797.4 million for EEM and 253.1 million for IWM.²³ The fund market cap for FXI was \$3,343.6 million, EFA was \$78,870.3 million, EWZ was \$6,023.4 million, TLT was \$7,442.4 million, VXX was \$1,085.6 million, and EWJ was \$16,625.1 million compared to \$34,926.1 million for EEM and \$35,809.1 million for IWM.²⁴

The Exchange notes that the options reporting requirements of Exchange Rule 4.13 would continue to be applicable to the options subject to this proposal.²⁵ As set forth in Exchange Rule 4.13(a), each Trading Permit Holder ("TPH") must report to the Exchange certain information in relation to any customer who, acting alone, or in concert with others, on the previous business day maintained aggregate long or short positions on the same side of the market of 200 or more contracts in any single class of option contracts dealt in on the Exchange.²⁶ Further, Exchange Rule 4.13(b) requires each TPH (other than an Exchange market-maker or Designated Primary Market-Maker)²⁷ that maintains a position in excess of 10,000 non-FLEX equity option contracts on the same side of the market, on behalf of its own account or for the account of a customer, to report to the Exchange information as to whether such positions are hedged, and provide documentation as to how such contracts are hedged.²⁸

²² See Notice, *supra* note 3, at 41459.

²³ See *id.*

²⁴ See *id.*

²⁵ See *id.*

²⁶ The report must include, for each such class of options, the number of option contracts comprising each such position and, in the case of short positions, whether covered or uncovered. *See* Exchange Rule 4.13(a).

²⁷ According to the Exchange, market-makers (including Designated Primary Market-Makers) are exempt from the referenced reporting requirement because market-maker information can be accessed through the Exchange's market surveillance systems. *See* Notice, *supra* note 3, at 41459.

²⁸ According to the Exchange, this information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. *See* *id.*

The Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity.²⁹ According to the Exchange, its surveillance procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.³⁰ In addition, the Exchange states that its surveillance procedures have been effective for the surveillance of trading in the options subject to this proposal, and will continue to be employed.³¹

The Exchange further states its belief that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a TPH or its customer may try to maintain an inordinately large unhedged position in the options subject to this proposal.³² Current margin and risk-based haircut methodologies, the Exchange states, serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a TPH must maintain for a large position held by itself or by its customer.³³ In addition, the Exchange notes that the Commission's net capital rule, Rule 15c3-1 under the Act,³⁴ imposes a capital charge on TPHs to the extent of any margin deficiency resulting from the higher margin requirement.³⁵

Amendment No. 1

As noted above, on November 22, 2017, the Exchange filed Amendment No. 1 to the proposed rule change to provide additional justification and support for the proposal. In Amendment No. 1, the Exchange states that it submitted the proposal at the request of

²⁹ *See id.*

³⁰ *See id.*

³¹ *See id.* at 41459 n.23. The Exchange represents that more than 50% of the weight of the securities held by the options subject to this proposal are also subject to a comprehensive surveillance agreement ("CSA"). *See id.* at 41458. Additionally, the Exchange states that the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index. *See id.* Further, the Exchange states that the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index. *See id.*

³² *See id.* at 41459.

³³ *See id.* at 41459-60.

³⁴ 17 CFR 240.15c3-1.

³⁵ *See* Notice, *supra* note 3, at 41460.

market participants whose on-exchange activity has been "hindered by existing position limits, causing them to be unable to provide additional liquidity not just on the Exchange, but also on other options exchanges on which they participate."³⁶ In further support of its proposed increases in position limits, in Amendment No. 1, the Exchange describes at length: (i) The creation and redemption process for ETFs (and a similar process for the ETN to which the proposal relates³⁷); (ii) the arbitrage activity that ensues when such instruments are overpriced or are trading at a discount to the securities on which they are based and helps to keep the instrument's price in line with the value of its underlying portfolio; and (iii) how these processes serve to mitigate the potential price impact of the ETF or ETN shares that might otherwise result from increased position limits.³⁸

In addition, in Amendment No. 1, the Exchange notes that some of the ETFs and the ETN to which the proposal relates are based on broad-based indices that underlie cash-settled options that are economically equivalent to the relevant ETF or similar to the relevant ETN, but where the option on the index is either subject to no position limit or is subject to a position limit reflecting a notional value that is larger than the position limit for the option on the ETF absent the proposed increase.³⁹ For the other ETFs in the proposal where this does not apply, the Exchange argues that, based on the liquidity, breadth, and depth of the underlying market, the index referenced by the ETF would be considered a broad-based index under the Exchange's rules.⁴⁰ According to the Exchange, if certain position limits are appropriate for the options overlying the

³⁶ See Amendment No. 1 at 4-5. The Exchange reiterates its understanding that certain market participants are opting to execute trades involving large numbers of options contracts in the symbols subject to the proposal in the over-the-counter market, and argues that these large trades do not contribute to the price discovery process performed at a lit market. *See id.* at 5.

³⁷ With regard to the ETN option included in the proposal—VXX—the Exchange acknowledged that there is no direct analogue to ETF "creation," but observed that the ETN issuer may sell additional VXX shares from its inventory. Regardless of whether VXX shares are redeemed or new VXX shares are issued, the Exchange stated, an issuer may transact in VIX futures in order to hedge its exposure, resulting in an arbitrage process similar to the one described for ETFs described above, thereby helping to keep an ETN's price in line with the value of its underlying index. *See* Amendment No. 1 at 7-8.

³⁸ *See id.* at 6-7.

³⁹ *See id.* at 8, and the Exchange's discussion of QQQQ, IWM, VXX, and EEM, and EFA, *id.* at 8-11.

⁴⁰ *See id.* at 8, and the Exchange's discussion of FXI, EWZ, TLT, and EWJ, *id.* at 12-14.

same index or is an analogue to the basket of securities that the ETF tracks, then those same economically equivalent position limits should be appropriate for the option overlying the ETF.⁴¹ The Exchange believes that the new position limits it is proposing meet this criterion.⁴² The Exchange also cites data in support of its argument that the market capitalization of the underlying index or reference asset of each of the ETFs and the ETN is large enough to absorb any price movements that may be caused by an oversized trade.⁴³

III. Proceedings To Determine Whether To Approve or Disapprove SR-CBOE-2017-057, as Amended, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act⁴⁴ to determine whether the proposed rule change, as amended, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comment on the proposed rule change, as amended.

Pursuant to Section 19(b)(2)(B) of the Act,⁴⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission notes that position and exercise limits serve as a regulatory tool designed to address manipulative schemes and adverse market impact surrounding the use of options.⁴⁶ As discussed above, the Exchange has proposed to increase the position and exercise limits for options on FXI, EFA, EWZ, TLT, VXX, and EWJ from 250,000 contracts to 500,000 contracts, for options on EEM and IWM from 500,000 contracts to 1,000,000 contracts, and for options on QQQQ from 900,000 contracts to 1,800,000 contracts. The proposed increase in position and exercise limits for each marks a substantial increase from current levels, for which the

Exchange recently has provided additional justification and analysis.⁴⁷

The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposed rule change, as amended, with Section 6(b)(5) of the Act,⁴⁸ which requires that the rules of a national securities exchange 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as amended, is consistent with Section 6(b)(5), or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,⁴⁹ any request for an opportunity to make an oral presentation.⁵⁰

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, as amended, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether

the position and exercise limit for each option as proposed could impact markets adversely.

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as amended, should be approved or disapproved by December 26, 2017. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 9, 2018. 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 email to rule-comments@sec.gov. Please include File No. SR-CBOE-2017-057 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 No. SR-CBOE-2017-057. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 Web site 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 No. SR-CBOE-2017-057 and should be submitted by December 26, 2017.

⁴¹ See *id.* at 8.

⁴² See *id.* at 8-14. For each of the ETFs and the ETN subject to the proposal, the Exchange cites specific data to illustrate its argument.

⁴³ See *id.* at 8-14.

⁴⁴ 15 U.S.C. 78s(b)(2)(B).

⁴⁵ *Id.*

⁴⁶ See, e.g., Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR-CBOE-2012-066).

⁴⁷ The Commission notes that the Exchange filed Amendment No. 1 to provide additional justification and analysis in support of the proposed position and exercise limits on November 22, 2017. See *supra* note 6.

⁴⁸ 15 U.S.C. 78f(b)(5).

⁴⁹ 17 CFR 240.19b-4.

⁵⁰ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Rebuttal comments should be submitted by January 9, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵¹

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82173; File No. SR-ISE-2017-102]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Shell Structure for the ISE Rulebook

November 29, 2017.

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 November 17, 2017, Nasdaq ISE, LLC (“ISE” or “Exchange”) 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 the Substance of the Proposed Rule Change

The Exchange proposes to adopt a shell structure for the ISE rulebook (“Rulebook”) as part of its initiative to structure its Rulebook.

The text of the proposed rule change is available on the Exchange’s Web site at <http://ise.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On March 9, 2016, Nasdaq, Inc. acquired the capital stock of U.S. Exchange Holdings, thereby indirectly acquiring all of the interests of the International Securities Exchange, LLC (now ISE), ISE Gemini, LLC (now Nasdaq GEMX, LLC) (“GEMX”) and ISE Mercury, LLC (now Nasdaq MRX, LLC) (“MRX”).³ The acquisition resulted in a total of six self-regulatory organization licenses for Nasdaq, Inc. which, in addition to the three aforementioned exchanges, also include The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq PHLX LLC (“Phlx”) and Nasdaq BX, Inc. (“BX”) (collectively, “Nasdaq Entities”).

The Exchange is planning to conform the chapters of the various Nasdaq Entity rulebooks for efficiency, and conformity of certain Nasdaq Entity processes. The Exchange believes that aligning the rules of the Nasdaq Entities will assist market participants in navigating the various rulebooks. Specifically, the Exchange proposes to add a shell structure which would reside alongside the current rulebook. The proposed shell would outline the various chapters of the future rulebook and contains new chapter numbering. A similar shell would be filed to add the same structure to each of the other Nasdaq Entities. The proposed chapters would be similar for each shell filed for each of the Nasdaq Entities. In subsequent rule changes, each of the Nasdaq Entities would file rule changes to move their current rules into the various chapters of the proposed shells for all six markets and delete the migrated rule from the current location in the Rulebook.⁴ The proposed shell would contain a general rule section and product specific section, in this case options, which would encompass all the rules of the Exchange.

The Exchange believes this new structure would align the Nasdaq

Entities’ rulebooks for ease of use by Members, who are members of more than one Nasdaq Entity. This proposal would not amend the current Rulebook and is therefore not a substantive change. A Member would continue to be able to view the current Rulebook alongside the proposed reorganized Rulebook. Subsequent rule changes will be filed to move the rule text into the shell Rulebook.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁶ in particular, in that it is designed 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, by starting the process of organizing its rules in a manner which is clear and consistent across the Nasdaq Entities. The Exchange believes that coordinating the chapters of the rulebooks among the Nasdaq Entities will provide Members, who are members of more than one Nasdaq Entity, with consistency and ease of reference in locating rules.

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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes do not impose a burden on competition because the proposed amendments are non-substantive, are intended to start the process to organize the rules of the Exchange in a manner that will be more user-friendly to Nasdaq Entity members.

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

No written comments were either solicited or received.

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

⁵¹ 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78119 (June 21, 2016), 81 FR 41611 (June 27, 2016) (SR-ISE-2016-11; SR-ISE Gemini-2016-05; SR-ISE Mercury-2016-10) (Order Granting Accelerated Approval of Proposed Rule Changes, Each as Modified by Amendment No. 1 Thereto, Relating to a Corporate Transaction in Which Nasdaq, Inc. Will Become the Indirect Parent of ISE, ISE Gemini, and ISE Mercury).

⁴ When relocating the current rule text into the new shell, the Exchange shall not amend the rule text but simply move existing rule text.

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).