

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–86106; File No. SR–CboeBZX–2019–055]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow the Cambria Tail Risk ETF, a Series of the Cambria ETF Trust, To Hold Listed Options Contracts in a Manner That Does Not Comply With Rule 14.11(i), Managed Fund Shares

June 14, 2019.

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 June 4, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On June 7, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule, as modified by Amendment No. 1, 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 allow the Cambria Tail Risk ETF (the “Fund”), a series of the Cambria ETF Trust (the “Trust”), to hold listed options contracts in a manner that does not comply with Rule 14.11(i) (“Managed Fund Shares”). The shares of the 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.

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 Fund began listing and trading on the Exchange pursuant to the generic listing standards under Rule 14.11(i) governing Managed Fund Shares on April 6, 2017 and remains currently listed on the Exchange pursuant to such rule.⁴ The Exchange proposes to continue listing and trading the Shares. The Shares would continue to comply with all of the generic listing standards with the exception of the requirement of Rule 14.11(i)(4)(C)(iv)(b)⁵ that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures) (the “Concentration Restriction”).⁶

⁴ The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

⁵ Rule 14.11(i)(4)(C)(iv)(b) provides that “the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).” The Exchange is proposing that the Fund be exempt from both the 30% and 65% requirements of Rule 14.11(i)(4)(C)(iv)(b).

⁶ The Exchange notes that this proposal is very similar to several previously submitted proposals to list and trade a series of Index Fund Shares (which are referred to as Investment Company Units under the rules of NYSE Arca, Inc.) and Managed Fund Shares with exposures to a single underlying reference asset that were either approved by the Commission or effective upon filing. See Securities Exchange Act Release Nos. 83146 (May 1, 2018), 83 FR 20103 (May 7, 2018) (SR–CboeBZX–2018–029); 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018); 77045 (February 3, 2016), 81 FR 6916 (February 9, 2016) (SR–NYSEArca–2015–113) (the “Amendment”); and 74675 (April 8, 2015), 80 FR 20038 (April 14, 2015) (SR–NYSEArca–2015–05)

The Shares are offered by the Trust, a Delaware statutory trust which is registered with the Commission as an open-end management investment company.⁷ The Fund’s adviser, Cambria Investment Management, L.P. (the “Adviser”), is not registered as a broker-dealer, and is not affiliated with a broker-dealer. Personnel who make decisions on the Fund’s portfolio composition are currently and shall continue to be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. In the event that (a) the 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 affiliated with a broker-dealer, the Adviser or such new adviser or sub-adviser 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’s portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

Cambria Tail Risk ETF

The Fund seeks to provide income and capital appreciation from investments in the U.S. market while protecting against significant downside risk. In order to achieve its investment objective, under Normal Market Conditions,⁸ the Fund invests in cash and U.S. Treasury Bonds, and utilizes a put option strategy to manage the risk of

(collectively, with the Amendment, the “Arca Filing”).

⁷ The Trust is registered under the 1940 Act. The Trust filed a supplement to the Fund’s prospectus included in its Registration Statement on May 9, 2019 (as supplemented, the “Registration Statement”). See Registration Statement on Form N–1A for the Trust (File Nos. 333–180879 and 811–22704). The descriptions of the Fund 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 to the Trust and affiliated persons under the Investment Company Act of 1940 (15 U.S.C. 80a–1). See Investment Company Act Release No. 30340 (January 4, 2013) (File No. 812–13959).

⁸ The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ In Amendment No. 1, the Exchange amended Item 2(a) of the proposed rule change to state that “The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on June 3, 2019.”

a significant negative movement in the value of domestic equities (commonly referred to as tail risk) over rolling one-month periods. Specifically, in order to hedge against sharp declines in the U.S. stock market, each month, the Fund purchases U.S. exchange-listed protective “out of the money” put options on the S&P 500 Index (“S&P 500 Options”).

The Fund’s holdings currently meet and will continue to meet the generic listing standards for fixed income securities under Rule 14.11(i)(4)(C)(ii) and cash and Cash Equivalents in Rule 14.11(i)(4)(C)(iii).⁹ The Fund has the ability to buy S&P 500 Options. The options strategy is actively managed by the Adviser and will adapt to changing market environments and is currently not in compliance with the requirement under Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional exposure of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).¹⁰

As noted above, Rule 14.11(i)(4)(C)(iv)(b) prevents the Fund from holding listed derivatives based on any single underlying reference asset in excess of 30% of the weight of its portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including

gross notional exposures). As proposed, the Fund could hold up to 90% of the weight of its portfolio (including gross notional exposures) in S&P 500 Options in a manner that may not comply with Rule 14.11(i)(4)(C)(iv)(b). The put option strategy is designed to attempt to provide protection from significant market declines on a month-by-month basis. This protection comes in the form of S&P 500 Options. The Adviser generally intends to re-initiate new S&P 500 Options positions that make up the put option position each month and reinvest any gains from these activities into U.S. Treasury Bonds. The Adviser also may, at its discretion, liquidate and establish new S&P 500 Options positions intra-month, or liquidate option positions without establishing new positions. The put option strategy only includes S&P 500 Options. The ability to hold S&P 500 Options with exposure to a single reference asset up to 90% of the weight of the portfolio (including gross notional exposures) would allow the Fund the flexibility to fully implement its investment strategy while remaining in compliance with the continued listing standards.

As noted above, the Fund invests only in cash, U.S. Treasury Bonds, and S&P 500 Options. The Exchange represents that, except for the Concentration Restriction in Rule 14.11(i)(4)(C)(iv)(b) with respect to S&P 500 Options, the Fund’s investments will continue to satisfy all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i).

The Trust is required to comply with Rule 10A-3¹¹ under the Act for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund will continue to comply with all other requirements applicable to Managed Fund Shares, which include the dissemination of key information such as the Disclosed Portfolio,¹² Net Asset Value,¹³ and the Intraday Indicative Value,¹⁴ suspension of trading or removal,¹⁵ trading halts,¹⁶ surveillance,¹⁷ minimum price variation for quoting and order entry,¹⁸ the information circular,¹⁹ and firewalls²⁰ as set forth in Exchange rules applicable

to Managed Fund Shares and the orders approving such rules. Moreover, the S&P 500 Options held by the Fund will trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²¹ 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 and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The Fund has represented to the Exchange that it will advise the Exchange of any failure by the 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 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 the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to the Fund under Exchange Rule 14.12.

Availability of Information

As noted above, the Fund will comply with the requirements under the Rule 14.11(i) related to Disclosed Portfolio, NAV, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of S&P 500 Options will be readily available from Cboe Exchange, Inc. or online information services such as Bloomberg or Reuters. Quotation and last sale information for S&P 500 Options will be available via the Options Price Reporting Authority. Price information for U.S. Treasury Bonds will be available from major market data vendors. The Disclosed Portfolio will be available on the Fund’s website (www.cambriafunds.com) free of charge. The Fund’s website will include a form of the prospectus for the Fund and additional information related to NAV and other applicable quantitative information. Information

²¹ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

⁹ The Exchange notes that certain of the Fund’s holdings in U.S. Treasury Bonds may qualify as Cash Equivalents by virtue of their maturity, but the Adviser does not intend to invest in any Cash Equivalents that are not U.S. Treasury Bonds. As defined in Exchange Rule 14.11(i)(4)(C)(iii)(b), Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

¹⁰ Because the Fund is not in compliance with Rule 14.11(i)(4)(C)(iv)(b), the Exchange has commenced delisting proceedings pursuant to Rule 14.12, including issuing a deficiency notification.

¹¹ 17 CFR 240.10A-3.

¹² See Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

¹³ See Rule 14.11(i)(4)(A)(i).

¹⁴ See Rule 14.11(i)(4)(B)(i).

¹⁵ See Rule 14.11(i)(4)(B)(iii).

¹⁶ See Rule 14.11(i)(4)(B)(iv).

¹⁷ See Rule 14.11(i)(2)(C).

¹⁸ See Rule 14.11(i)(2)(B).

¹⁹ See Rule 14.11(i)(6).

²⁰ See Rule 14.11(i)(7).

regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for reasons that, in the view of the Exchange, make trading inadvisable. The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange has appropriate rules to facilitate trading in the Shares during all trading sessions. The Exchange prohibits the distribution of material non-public information by its employees. Quotation and last sale information for the Shares will be available via the CTA high-speed line.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ 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 in that the Shares will meet each of the continued listing criteria in BZX Rule 14.11(i) with the exception of the Concentration Restriction in Rule 14.11(i)(4)(C)(iv)(b), which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).²⁴ The Exchange believes

that the diversity, liquidity, and market cap of the securities underlying the S&P 500 Index are sufficient to protect against market manipulation of both the Fund's holdings and the Shares as it relates to the S&P 500 Options holdings. The Exchange also believes that the liquidity in the S&P 500 Options market²⁵ mitigates the concerns that Rule 14.11(i)(4)(C)(iv)(b) is intended to address and that such liquidity would also act to prevent other S&P 500 Options from being susceptible to manipulation, and thus, make the Shares less susceptible to manipulation. Further, allowing the Fund to hold a greater portion of its portfolio in S&P 500 Options would mean that the Fund would not be required to use over-the-counter ("OTC") derivatives if the Adviser deemed it necessary to get exposure in excess of the Concentration Restriction in Rule 14.11(i)(4)(C)(iv)(b), which would reduce the Fund's operational burden by allowing the Fund to use listed options contracts to achieve its investment objective and would eliminate the counter-party risk associated with holding OTC derivative instruments.

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. The S&P 500 Options held by the Fund will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange may obtain information regarding trading in the Shares and the S&P 500 Options held by the Fund via the ISG from other exchanges who are a member of ISG or affiliated with a member of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The Exchange further notes that the Fund will meet and be subject to all other requirements of the generic listing rules and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the dissemination of key information such as the Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value, suspension of

trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in Exchange rules applicable to Managed Fund Shares.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather, will facilitate the options strategy of an actively-managed exchange-traded product that will allow the Fund to better compete in the marketplace, 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 Act and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b-4(f)(6)²⁷ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing with the Commission, the Exchange asked the Commission to

²⁶ 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 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.

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

²⁴ As noted above, the Exchange is proposing that the Fund be exempt from the Concentration Restriction of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight

of the portfolio (including gross notional exposures)." The Exchange is proposing that the Fund be exempt from both the 30% and 65% requirements of Rule 14.11(i)(4)(C)(iv)(b).

²⁵ In 2018, more than 1.48 million S&P 500 Options contracts were traded per day on Cboe Options, which is more than \$350 billion in notional volume traded on a daily basis.

waive the 30-day operative delay to permit the Fund to immediately employ an investment strategy that would allow the Fund to hold listed derivatives based on a single underlying reference asset (*i.e.*, S&P 500 Options) in a manner that may not comply with the generic listing standards under Rule 14.11(i)(4)(C)(iv)(b). The Commission notes that the proposed rule change in this regard is similar to previously submitted proposals to list and trade series of Index Fund Shares and Managed Fund Shares with exposure to a single underlying reference asset (*i.e.*, the S&P 500 Index) that were either approved by the Commission or effective upon filing.²⁹ Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³⁰

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

²⁹ See *supra* note 6. In the approval order for proposed rule change SR-CboeBZX-2018-029, the Commission noted that the proposing exchange stated that "SPX options are among the most liquid index options in the U.S. and derive their value from the actively traded S&P 500 components. SPX options are cash-settled with no delivery of stocks or ETFs, and trade in competitive auction markets with price and quote transparency. The Exchange believes that the highly regulated S&P 500 options markets, and the broad base and scope of the S&P 500 Index, make securities that derive their value from that index, including S&P 500 options, less susceptible to potential market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, price and quote transparency, and arbitrage opportunities." See Securities Exchange Act Release No. 77045, *supra* note 6, 81 FR at 6917 n.15.

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

- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-055 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-CboeBZX-2019-055. This 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 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-055 and should be submitted on or before July 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Vanessa A. Countryman,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rule 302, SEC File No. 270-453, OMB Control No. 3235-0510

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 302 (17 CFR 242.302) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 ("Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval.

Regulation ATS sets forth a regulatory regime for "alternative trading systems" ("ATSs"). An entity that meets the definition of an exchange must register, pursuant to Section 5 of the Exchange Act, as a national securities exchange under Section 6 of the Exchange Act¹ or operate pursuant to an appropriate exemption.² One of the available exemptions is for ATSs.³ Exchange Act Rule 3a1-1(a)(2) exempts from the definition of "exchange" under Section 3(a)(1) an organization, association, or group of persons that complies with Regulation ATS.⁴ Regulation ATS requires an ATS to, among other things, register as a broker-dealer with the Securities and Exchange Commission ("SEC"), file a Form ATS with the Commission to notice its operations, and establish written safeguards and procedures to protect subscribers' confidential trading information. An ATS that complies with Regulation ATS and operates pursuant to the Rule 3a1-1(a)(2) exemption would not be required by Section 5 to register as a national securities exchange.

Rule 302 of Regulation ATS (17 CFR 242.302) describes the recordkeeping requirements for ATSs. Under Rule 302,

¹ See 15 U.S.C. 78e and 78f. A "national securities exchange" is an exchange registered as such under Section 6 of the Exchange Act.

² 15 U.S.C. 78a *et seq.*

³ Rule 300(a) of Regulation ATS provides that an ATS is "any organization, association, person, group of persons, or system: (1) [t]hat constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of [Exchange Act Rule 3b-16]; and (2) [t]hat does not: (i) [s]et rules governing the conduct of subscribers other than the conduct of subscribers' trading on such [ATS]; or (ii) [d]iscipline subscribers other than by exclusion from trading."

⁴ See 17 CFR 240.3a1-1(a)(2).

³¹ 17 CFR 200.30-3(a)(12).