

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88247; File No. SR–CboeBZX–2019–102]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3 Thereto, to List and Trade Shares of the ClearBridge Focus Value ETF Under BZX Rule 14.11(k)

February 20, 2020.

#### I. Introduction

On November 27, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the ClearBridge Focus Value ETF (“Fund”) under BZX Rule 14.11(k) (Managed Portfolio Shares).<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on December 17, 2019.<sup>4</sup> On December 16, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>5</sup> On January 31, pursuant to Section 19(b)(2) of the Act,<sup>6</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>7</sup> On February 13, 2020, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.<sup>8</sup> On

February 19, 2020, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 2.<sup>9</sup> The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 3

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

This Amendment No. 3 to SR–CboeBZX–2019–102 amends and replaces in its entirety Amendment No. 2 to the proposal, submitted on February 13, 2020, which amended and replaced in its entirety Amendment No. 1 to the proposal, submitted on December 16, 2019, which amended and replaced in its entirety the proposal as originally submitted on November 27, 2019. The Exchange submits this Amendment No. 2 [sic] in order to clarify certain points and add additional details to the proposal.

The Exchange received approval to add new Rule 14.11(k) for the purpose of permitting the listing and trading of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment

company,<sup>10</sup> on December 16, 2019.<sup>11</sup> Rule 14.11(k)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. As such, the Exchange is submitting this proposal in order to list and trade shares of the ClearBridge Focus Value ETF (the “Fund”) under Rule 14.11(k).

#### Description of the Fund and the Trust

The shares of the Fund (the “Shares”) will be issued by ActiveShares ETF Trust (the “Trust”), a statutory trust organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company.<sup>12</sup> The investment adviser to the Trust will be Precidian Funds LLC (the

<sup>10</sup> As defined in Rule 14.11(k)(3)(A), the term “Managed Portfolio Share” means a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a Creation Unit (as defined below), or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company’s Form N–1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit (as defined below), or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account (as defined below) for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

<sup>11</sup> See Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047).

<sup>12</sup> The Trust is registered under the 1940 Act. On November 1, 2019, the Trust filed a registration statement on Form N–1A relating to the Fund (File No. 811–23487) (the “Registration Statement”). In response to an application for exemptive relief (the “Exemptive Application”) (File No. 812–14405), the Commission issued an order granting exemptive relief applicable to the Trust (“Exemptive Order”) under the 1940 Act on May 20, 2019 (Investment Company Act Release No. 33477). Investments made by the Fund will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. The Exemptive Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.”

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> The Commission recently approved the Exchange’s proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares. See Securities Exchange Act Release No. 87759 (December 16, 2019), 84 FR 70223 (December 20, 2019) (SR–CboeBZX–2019–047) (“Managed Portfolio Shares Order”).

<sup>4</sup> See Securities Exchange Act Release No. 87719 (December 11, 2019), 84 FR 68999 (“Notice”).

<sup>5</sup> Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2019-102/sr-cboebzx2019102-6634920-203299.pdf>.

<sup>6</sup> 15 U.S.C. 78s(b)(2).

<sup>7</sup> See Securities Exchange Act Release No. 88108, 85 FR 6987 (February 6, 2020). The Commission designated March 16, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>8</sup> Amendment No. 2 is available on the Commission’s website at <https://www.sec.gov/>

[comments/sr-cboebzx-2019-102/sr-cboebzx2019102-6830764-208570.pdf](https://www.sec.gov/comments/sr-cboebzx-2019-102/sr-cboebzx2019102-6830764-208570.pdf).

<sup>9</sup> Amendment No. 3 is available on the Commission’s website at <https://www.sec.gov/comments/sr-cboebzx-2019-102/sr-cboebzx2019102-6839776-208722.pdf>.

“Adviser”). ClearBridge Investments, LLC (“ClearBridge”) and Western Asset Management Company, LLC (“Western Asset”) and, collectively with ClearBridge, the “Sub-Advisers”) will be the Sub-Advisers to the Fund. Legg Mason Investor Services, LLC (the “Distributor”) will serve as the distributor of the Fund’s Shares. 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 the Verified Intraday Indicative Value (“VIIV”),<sup>13</sup> reference assets, and intraday indicative values, and the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange, as provided under Rule 14.11(a).

Rule 14.11(k)(2)(D) provides that if the investment adviser to the Investment Company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to such Investment Company portfolio and/or the Creation Basket.<sup>14</sup> Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s portfolio composition or has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment

<sup>13</sup> Rule 14.11(k)(3)(B) defines the term VIIV as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours (as defined in Rule 1.5(w)) by the Reporting Authority, as defined below.

<sup>14</sup> Rule 14.11(k)(3)(E) defines the term “Creation Basket” as on any given business day the names and quantities of the specified instruments (and/or an amount of cash) that are required for an AP Representative (as defined below) to deposit in-kind on behalf of an Authorized Participant in exchange for a Creation Unit and the names and quantities of the specified instruments (and/or an amount of cash) that will be transferred in-kind to an AP Representative on behalf of an Authorized Participant in exchange for a Redemption Unit, which will be identical and will be transmitted to each AP Representative before the commencement of trading.

Company portfolio or changes thereto or the Creation Basket.<sup>15</sup> Rule 14.11(k)(2)(D) is similar to Rule 14.11(c)(5)(A)(i), related to Index Fund Shares, except that Rule 14.11(k)(2)(D) relates to the establishment of a “fire wall” between the investment adviser and the broker-dealer as applicable to an Investment Company’s portfolio and/or Creation Basket, not an underlying benchmark index, as is the case with index-based funds. Rule 14.11(k)(2)(D) is also similar to Rule 14.11(i)(7), related to Managed Fund Shares, except that Rule 14.11(k)(2)(D) relates to the establishment of a “fire wall” between the investment adviser and the broker-dealer as applicable to an Investment Company’s portfolio and Creation Basket, and not just the underlying portfolio, as is the case with Managed Fund Shares. The Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. Neither Sub-Adviser is registered as a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of and changes to the Fund’s portfolio and/or Creation Basket.

In the event (a) the Adviser or either Sub-Adviser becomes registered as a broker-dealer or becomes 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, it will implement and maintain a fire wall with respect to its relevant personnel or its

<sup>15</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel as well as the Sub-Advisers and their respective related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects its fiduciary obligations as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser (i) adopts and implements written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) reviews, at least annually, the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designates an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above. The Fund will also comply with the requirements of Regulation Fair Disclosure, as provided in the Exemptive Application.

broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket.

Any person related to the Adviser, the Sub-Advisers, or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 14.11(k)(2)(E) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information regarding the Fund’s portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio composition or changes thereto or the Creation Basket.

## Description of the Fund

### ClearBridge Focus Value ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order and the holdings will be consistent with all requirements in the Exemptive Application and Exemptive Order.<sup>16</sup>

<sup>16</sup> Pursuant to the Exemptive Order, the permissible investments include only the following instruments that trade on a U.S. exchange contemporaneously with the Shares: ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts, and futures for which the reference asset the Fund may invest in directly or, in the case of an index future, based on an index of a type of asset that the Fund could invest in directly; as well

The Fund seeks long-term capital appreciation. By employing fundamental research, in an effort to identify securities with attractive risk-adjusted returns, the Fund's portfolio management team constructs the portfolio on a bottom-up basis.

#### Investment Restrictions

The Fund will not purchase any securities that are illiquid investments at the time of purchase and the Fund's holdings will be consistent with all requirements described in the Exemptive Application and Exemptive Order.

The Shares of the Fund will conform to the initial and continued listing criteria under Rule 14.11(k). The Fund's holdings will be limited to and consistent with what is permissible under the Exemptive Order.

The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

#### Creations and Redemptions of Shares

Creations and redemptions of the Shares will occur as described in Rule 14.11(k). More specifically, in connection with the creation and redemption of Creation Units<sup>17</sup> and Redemption Units,<sup>18</sup> the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a "Confidential Account").<sup>19</sup> Authorized Participants (as defined in the Fund's Form N-1A filed with the Commission, "AP") will sign an agreement with an AP Representative<sup>20</sup> establishing the

as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds and repurchase agreements).

<sup>17</sup> Rule 14.11(k)(3)(F) defines the term "Creation Unit" as a specified minimum number of Managed Portfolio Shares issued by an Investment Company at the request of an Authorized Participant in return for a designated portfolio of instruments and/or cash.

<sup>18</sup> Rule 14.11(k)(3)(G) defines the term "Redemption Unit" as a specified minimum number of Managed Portfolio Shares that may be redeemed to an Investment Company at the request of an Authorized Participant in return for a portfolio of instruments and/or cash.

<sup>19</sup> Rule 14.11(k)(3)(D) defines the term "Confidential Account" as an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

<sup>20</sup> Rule 14.11(k)(3)(C) defines the term "AP Representative" as an unaffiliated broker-dealer,

Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a Depository Trust Company ("DTC") Participant that has executed a "Participant Agreement" with the Distributor with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP's Confidential Account, for the benefit of the AP, without disclosing the identity of such securities to the AP.

Each AP Representative will be given, before the commencement of trading each Business Day (defined below), the Creation Basket (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative, to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units. Shares of the Fund will be issued and redeemed in Creation Units and Redemption Units of 5,000 or more Shares. The Fund will offer and redeem Creation Units and Redemption Units on a continuous basis at the net asset value ("NAV") per share next determined after receipt of an order in proper form. The NAV per share of the Fund will be determined as of the close of regular trading on the Exchange on each day that the Exchange is open (a "Business Day"). The Fund will sell and redeem Creation Units and Redemption Units only on Business Days.

To keep costs low and permit the Fund to be as fully invested as possible, Shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Exemptive Application, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments ("Deposit Instruments"), and APs redeeming their Shares will receive an in-kind transfer of specified instruments ("Redemption

with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.

Instruments") through the AP Representative in their Confidential Account.<sup>21</sup> On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the "Creation Basket."

#### Placement of Purchase Orders

The Fund will issue Shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of Shares will operate in a manner similar to that of other ETFs. The Fund will issue Shares only at the NAV per share next determined after an order in proper form is received.

In the case of a creation, the AP would enter an irrevocable creation order with the Fund and direct the AP Representative to purchase the Deposit Instruments. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket. Once the Deposit Instruments have been acquired in the Confidential Account, the AP Representative would contribute the Deposit Instruments in-kind to the Fund.

The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in the Fund's prospectus or Statement of Additional Information ("SAI"). The NAV of the Fund is expected to be determined once each Business Day at a time determined by the Trust's Board of Trustees ("Board"), currently anticipated to be as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) (the "Valuation Time"). The Fund will establish a cut-off time ("Order Cut-Off Time") for purchase orders in proper form. Such Order Cut-Off Time will be provided in the Registration Statement. To initiate a purchase of Shares, an AP must submit

<sup>21</sup> The Fund must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

to the Distributor an irrevocable order to purchase such Shares after the most recent prior Valuation Time. All orders to purchase Creation Units must be received by the Distributor no later than the Order Cut-Off Time in each case on the date such order is placed (“Transmittal Date”) for the AP to receive the NAV per share determined on the Transmittal Date. As with all existing ETFs, if there is a difference between the NAV attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the “Balancing Amount”).

Purchases of Shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per share purchased plus applicable transaction fees.<sup>22</sup> Other than the Balancing Amount, the Fund will substitute cash only under exceptional circumstances and as set forth under the Fund’s policies and procedures governing the composition of Creation Baskets.

#### Authorized Participant Redemption

The Shares may be redeemed to the Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by an AP (“AP Redemption Order”). The Fund will establish in its Registration Statement an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of the Fund will be redeemable at their NAV per share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. A transaction fee may also be imposed on redemption orders. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time, but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then the Fund would instruct its custodian to deliver the Redemption Instruments to the appropriate Confidential Account. The Authorized Participant would direct the AP Representative on when that day to liquidate those securities. As with the purchase of securities, the AP Representative will use methods, such

<sup>22</sup> To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) Any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by the Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for the Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash.<sup>23</sup> The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions. Other than the Balancing Amount, the Fund will substitute cash only under exceptional circumstances and as set forth under the Fund’s policies and procedures governing the composition of Creation Baskets.<sup>24</sup>

#### Net Asset Value

The NAV per share of the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including, without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. Interest and investment income on the Trust’s assets accrue daily and will be included in the Fund’s total assets. The NAV per share for the Fund will be calculated by the Fund’s administrator and determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.) on each day that the Exchange is open.

<sup>23</sup> The value of any positions not susceptible to in-kind settlement may be paid in cash.

<sup>24</sup> To the extent that the Fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs transacting in cash.

Exchange-traded instruments will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the securities are primarily traded at the time of valuation. Other holdings of the Fund will generally be valued on the basis of independent pricing services, quotes obtained from brokers and dealers or price quotations or other equivalent indications of value provided by a third-party pricing service, reported net asset value, or at cost.

#### Availability of Information

The Fund’s website ([www.leggmason.com/etfliterature](http://www.leggmason.com/etfliterature)), which will be publicly available prior to the listing and trading of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund’s website will include additional quantitative information updated on a daily basis, including, on a per Share basis for the Fund, the prior Business Day’s NAV and the market closing price and a calculation of the premium and discount of the market closing price. The Fund’s website will also disclose each day the median bid/ask spread for the Fund’s most recent 30 days based on the National Best Bid (“NBB”) and National Best Offer (“NBO”) at the time of calculation of such NAV (the “Bid/Ask Price”).<sup>25</sup> In addition, the Fund will provide any other information on its website regarding premiums/discounts that ETFs registered under the 1940 Act are required to provide or that are otherwise required under the Exemptive Order. The website and information will be publicly available at no charge.

The Trust’s SAI and the Fund’s shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission’s website at [www.sec.gov](http://www.sec.gov).

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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (“CTA”) high-speed line. In addition, the VIIV, as defined in Rule 14.11(k)(3)(B) and as described further below, will be widely disseminated by

<sup>25</sup> The Bid/Ask Price of the Fund will be determined using the mid-point between the current NBB and NBO as of the time of calculation of the Fund’s NAV. The records relating to Bid/Ask Prices will be retained by the Fund and/or its service providers.

the Reporting Authority<sup>26</sup> and/or one or more major market data vendors in one-second intervals during Regular Trading Hours.

#### Dissemination of the VIIV

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV. The VIIV for the Fund will be disseminated by the Reporting Authority and/or one or more major market data vendors in one-second intervals during Regular Trading Hours. For purposes of the VIIV, securities held by the Fund will be valued throughout the day based on the mid-point between the disseminated current NBB and NBO. If the Adviser determines that a portfolio security does not have a readily available market quotation, that fact along with the identity and weighting of that security in the Fund's VIIV calculation will be publicly disclosed on the Fund's website.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading

<sup>26</sup> Rule 14.11(k)(3)(H) defines the term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares as the Exchange, the exchange that lists a particular series of Managed Portfolio Shares (if the Exchange is trading such series pursuant to unlisted trading privileges), an institution, or a reporting service designated by the Investment Company as the official source for calculating and reporting information relating to such series, including, the net asset value, the Verified Intraday Indicative Value, or other information relating to the issuance, redemption or trading of Managed Portfolio Shares. A series of Managed Portfolio Shares may have more than one Reporting Authority, each having different functions.

in the Shares inadvisable, including whether unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(k)(4)(B)(iii)(a) and (b), which set forth circumstances under which trading in the Shares of the Fund will be halted.

Specifically, Rule 14.11(k)(4)(B)(iii)(a) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Managed Portfolio Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>27</sup> The Adviser has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions.

Rule 14.11(k)(4)(B)(iii)(b) provides that, if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the

<sup>27</sup> The Exemptive Application provides that the Investment Company or their agent will request that the Exchange halt trading in the applicable series of Managed Portfolio Shares where: (i) The intraday indicative values calculated by the calculation engines differ by more than 25 basis points for 60 seconds in connection with pricing of the Verified Intraday Indicative Value; or (ii) holdings representing 10% or more of a series of Managed Portfolio Shares' portfolio have become subject to a trading halt or otherwise do not have readily available market quotations. Any such requests will be one of many factors considered in order to determine whether to halt trading in a series of Managed Portfolio Shares and the Exchange retains sole discretion in determining whether trading should be halted. As provided in the Exemptive Application, each series of Managed Portfolio Shares would employ a pricing verification agent to continuously compare two intraday indicative values during Regular Trading Hours in order to ensure the accuracy of the Verified Intraday Indicative Value.

Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

#### Trading Rules

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. Shares will trade on the Exchange only during Regular Trading Hours as provided in Rule 14.11(k)(2)(B). The Exchange has appropriate rules in place to facilitate trading during all trading sessions in which the Shares will trade. As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(k) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.<sup>28</sup> A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange has obtained a representation from the issuer of the Shares of the Fund that the NAV per share of the Fund will be calculated daily and will be made available to all market participants at the same time.

#### Surveillance

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 Managed Portfolio Shares. As part of these surveillance procedures and consistent with Rule 14.11(k)(2)(C), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of the Fund. 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

<sup>28</sup> See 17 CFR 240.10A-3.

its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>29</sup>

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

#### Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular (“Circular”) of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings will be disclosed within at least 60 days following the end of every fiscal quarter.

In addition, the Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be

calculated after 4:00 p.m., E.T. each trading day.

#### 2. Statutory Basis

The Exchange believes that this proposal is consistent with Section 6(b) of the Act<sup>30</sup> in general and Section 6(b)(5) of the Act<sup>31</sup> in particular in that it is 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.

The Exchange believes that this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Fund would meet each of the rules relating to listing and trading of Managed Portfolio Shares and, to the extent that the Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading if it hadn’t started trading on the Exchange or would commence delisting procedures under Exchange Rule 14.12. More specifically, the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, the Fund under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange, there are fewer than 50 beneficial holders of the Fund for 30 or more consecutive trading days; (b) if the Exchange has halted trading in the Fund because the VIIV is interrupted pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such interruption persists past the trading day in which it occurred or is no longer available; (c) if the Exchange has halted trading in the Fund because the NAV with respect to such Fund is not disseminated to all market participants at the same time, the holdings of such Fund are not made available on at least a quarterly basis as required under the 1940 Act, or such holdings are not made available to all market participants at the same time pursuant to Rule 14.11(k)(4)(B)(iii)(b) and such issue persists past the trading day in which it occurred; (d) if the Exchange has halted trading in the Fund pursuant to Rule 14.11(k)(4)(B)(iii)(a) and such issue persists past the trading day in which it occurred; (e) if the Fund has failed to file any filings required by the Commission or if the Exchange is aware that the Fund is not in compliance with the conditions of any currently

applicable exemptive order or no-action relief granted by the Commission or Commission staff with respect to the Fund; (f) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (g) if any of the applicable Continued Listing Representations, as defined in Rule 14.11(a), for the Fund are not continuously met; or (h) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. Neither Sub-Adviser is registered as a broker-dealer, but each is affiliated with the Distributor, a broker-dealer, and has implemented and will maintain a “fire wall” with respect to such affiliate broker-dealer regarding access to information concerning the composition and/or changes to the Fund’s portfolio and Creation Basket.

In the event (a) the Adviser or either Sub-Adviser becomes registered as a broker-dealer or becomes 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, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio and/or Creation Basket. Any person related to the Adviser, the Sub-Advisers, or the Trust who makes decisions pertaining to the Fund’s portfolio composition or that has access to information regarding the Fund’s portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

Further, Rule 14.11(k)(2)(E) requires that any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Investment Company’s portfolio composition or changes thereto or the Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or changes thereto or the Creation Basket. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer

<sup>29</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>30</sup> 15 U.S.C. 78f.

<sup>31</sup> 15 U.S.C. 78f(b)(5).

with respect to access to information concerning the composition and/or changes to such Investment Company portfolio or Creation Basket. Any person or entity who has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio or changes thereto or the Creation Basket.

The Exchange further believes that Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because it provides meaningful requirements about both the data that will be made publicly available about the Shares as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(k)(2)(E) will act as a strong safeguard against misuse and improper dissemination of information related to the Fund's portfolio composition or changes thereto or the Creation Basket. The requirement that any person or entity implement procedures to prevent the use and dissemination of material nonpublic information regarding the portfolio or Creation Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

The Exchange further believes that the proposal is designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares and to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange would halt trading under certain circumstances under which trading in the Shares may be inadvisable. Specifically, trading in the Shares will be subject to Rule 14.11(k)(4)(B)(iii)(a), which provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading

in the series of Managed Portfolio Shares inadvisable. These may include:

(i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>32</sup> The Adviser has represented to the Exchange that it will provide the Exchange with prompt notification upon the existence of any such condition or set of conditions. Trading in the Shares will also be subject to Rule 14.11(k)(4)(B)(iii)(b), which provides that if the Exchange becomes aware that: (i) The VIIV of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time; (iii) the holdings of a series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the 1940 Act; or (iv) such holdings are not made available to all market participants at the same time, (except as otherwise permitted under the currently applicable exemptive order or no-action relief granted by the Commission or Commission staff to the Investment Company with respect to the series of Managed Portfolio Shares), it will halt trading in such series until such time as the VIIV, the NAV, or the holdings are available, as required.

With respect to the proposed listing and trading of Shares of the Fund, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 14.11(k). The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying exchange-traded instruments with other markets and other entities that are members of the 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 and the underlying exchange-traded instruments from markets and other entities that are members of ISG or with which the

Exchange has in place a comprehensive surveillance sharing agreement.

With respect to trading of the Shares, the ability of market participants to buy and sell Shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative real-time value for the Fund's underlying holdings. Market participants are expected to accept the VIIV as a reliable, indicative real-time value because (1) the VIIV will be calculated and disseminated based on the Fund's actual portfolio holdings, (2) the securities in which the Fund plans to invest are generally highly liquid and actively traded and trade at the same time as the Fund and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation that the NAV per share of the Fund will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain the Fund's SAI, shareholder reports, Form N-CSR, and Form N-PORT. The Fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR and Form N-PORT may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Fund, a large amount of information will be publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated every second throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for the Fund will include a prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis.

Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18 or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to Rule 14.11(k)(4)(B)(iii)(a)

<sup>32</sup> See supra note 27.

and (b), which set forth circumstances under which Shares of the Fund will be halted.

In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the Shares. The Shares will conform to the initial and continued listing criteria under Rule 14.11(k). The Fund's holdings will be limited to and consistent with what is permissible under the Exemptive Order. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the 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 than facilitate the listing and trading of an actively-managed exchange-traded product that will enhance 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. Discussion and Commission Findings**

After careful review, the Commission finds that the proposed rule change, as

modified by Amendment No. 3, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.<sup>33</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 3, is consistent with Section 6(b)(5) of the Act,<sup>34</sup> which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Specifically, the Commission notes that the Exchange has obtained a representation from the issuer that the NAV per Share of the Fund will be calculated daily and will be made available to all market participants at the same time.<sup>35</sup> 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. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the VIIV will be widely disseminated by the Reporting Authority and/or one or more major market data vendors in one-second intervals during Regular Trading Hours, and must be disseminated to all market participants at the same time.<sup>36</sup>

<sup>33</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>34</sup> 15 U.S.C. 78f(b)(5).

<sup>35</sup> See BZX Rule 14.11(k)(4)(A)(ii).

<sup>36</sup> See BZX Rule 14.11(k)(4)(B)(i).

Moreover, the Fund's website will include a form of the prospectus and additional data relating to NAV and other applicable quantitative information for the Fund, including any information regarding premiums/discounts that ETFs registered under the 1940 Act are required to provide or that are otherwise required under the Exemptive Order. Such website and information will be publicly available at no charge.

The Commission also notes that the Exchange's rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider all relevant factors in exercising its discretion to halt trading in the Shares, and will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.<sup>37</sup> Trading in the Shares also will be subject to BZX Rule 14.11(k)(4)(B)(iii)(b), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. The Exchange represents that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange states that the Adviser is not registered as a broker-dealer or affiliated with a broker-dealer. The Exchange states that neither Sub-Adviser is registered as a broker-dealer, but that each is affiliated with a broker-dealer and has implemented and will maintain a "fire wall" with respect to such broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Fund's portfolio and Creation Basket. Further, the Commission notes that any person related to the Fund's investment adviser or to the Trust who makes decisions pertaining to the Fund's portfolio composition or has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the

<sup>37</sup> See BZX Rule 14.11(k)(4)(B)(iii)(a).



Fund's portfolio or changes thereto or the Creation Basket.<sup>38</sup> In addition, any person or entity, including an AP Representative, custodian, Reporting Authority, distributor, or administrator, who has access to information regarding the Fund's portfolio composition or changes thereto or its Creation Basket, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund portfolio or changes thereto or the Creation Basket.<sup>39</sup> Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity must erect and maintain a "fire wall" between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to such Fund's portfolio or Creation Basket.<sup>40</sup> Finally, the Exchange represents that trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Portfolio Shares,<sup>41</sup> and 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 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. Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the Shares.<sup>42</sup>

<sup>38</sup> See BZX Rule 14.11(k)(2)(D). The Exchange represents that any person related to the Adviser, the Sub-Advisers, or the Trust who makes decisions pertaining to the Fund's portfolio composition or that has access to information regarding the Fund's portfolio or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio or changes thereto and the Creation Basket.

<sup>39</sup> See BZX Rule 14.11(k)(2)(E).

<sup>40</sup> See *id.* The Exchange represents that any person or entity who has access to information regarding the Fund's portfolio composition or changes thereto or the Creation Basket will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the portfolio composition or changes thereto or the Creation Basket.

<sup>41</sup> See BZX Rule 14.11(k)(2)(C), which requires, as part of the surveillance procedures for Managed Portfolio Shares, the Fund's investment adviser to, upon request by the Exchange or the Financial Industry Regulatory Authority ("FINRA"), on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

<sup>42</sup> The Exchange represents that the Circular will discuss the following: (1) Procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which

In support of this proposal, the Exchange represents that:

(1) The Shares will conform to the initial and continued listing criteria under BZX Rule 14.11(k).

(2) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

(3) The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed, and may obtain trading information, regarding trading in the Shares, and the underlying exchange-traded instruments with other markets and other entities that are members of the ISG. In addition, the Exchange may obtain information regarding trading in the Shares and the underlying exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement.

(4) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions in which the Shares trade.

(5) For initial and continued listing, the Fund will be in compliance with Rule 10A-3 under the Act.<sup>43</sup>

(6) The Fund's holdings will conform to the permissible investments as set forth in the Exemptive Application and Exemptive Order, and investments made by the Fund will be consistent with all requirements set forth in the Exemptive Application and Exemptive Order. The Fund's investments will be consistent with its investment objective and will not be used to enhance leverage.

The Exchange represents that all statements and representations made in the filing regarding: (1) The description of the portfolio or reference assets; (2) limitations on portfolio holdings or reference assets; (3) dissemination and availability of the VIIV, reference assets, and intraday indicative values; and (4) the applicability of Exchange rules constitute continued listing requirements for listing the Shares on the Exchange. In addition, the Exchange represents that the issuer 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

imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the VIIV is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the portfolio holdings will be disclosed within at least 60 days following the end of every fiscal quarter.

<sup>43</sup> See 17 CFR 240.10A-3.

Act, the Exchange will surveil for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under BZX Rule 14.12.

#### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-102 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-2019-102. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR–CboeBZX–2019–102, and should be submitted on or before March 18, 2020.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. In Amendment No. 3, the Exchange modified the description of the Fund's investments and conformed the description of BZX Rule 14.11(k) to the final rule approved in the Managed Portfolio Shares Order. Amendment No. 3 also provides other clarifications and additional information to the proposed rule change.<sup>44</sup> The changes and additional information in Amendment No. 3 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>45</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>46</sup> that the proposed rule change (SR–CboeBZX–2019–102), as modified by Amendment No. 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03770 Filed 2–25–20; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88255; File No. SR–NYSEArca–2019–60]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4, To List and Trade Shares of the KFA Global Carbon ETF Under NYSE Arca Rule 8.600–E

February 20, 2020.

On August 14, 2019, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares (“Shares”) of the KFA Global Carbon ETF (“Fund”) under NYSE Arca Rule 8.600–E, which governs the listing and trading of Managed Fund Shares on the Exchange. The proposed rule change was published for comment in the **Federal Register** on August 29, 2019.<sup>3</sup> On September 12, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.<sup>4</sup> On October 10, 2019, pursuant to Section 19(b)(2) of the Exchange Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>6</sup> On October 22, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.<sup>7</sup> On November 22, 2019, the Commission published notice of Amendment No. 2 and instituted proceedings under Section 19(b)(2)(B) of the Act <sup>8</sup> to determine

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Securities Exchange Act Release No. 86752 (Aug. 23, 2019), 84 FR 45557.

<sup>4</sup> Amendment No. 1 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2019-60/srnysearca201960-6117868-192147.pdf>.

<sup>5</sup> 15 U.S.C. 78s(b)(2).

<sup>6</sup> See Securities Exchange Act Release No. 87277, 84 FR 55658 (Oct. 17, 2019). The Commission designated November 27, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

<sup>7</sup> Amendment No. 2 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2019-60/srnysearca201960-6324054-194703.pdf>.

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

whether to approve or disapprove the proposed rule change.<sup>9</sup> On December 16, 2019, the Exchange filed Amendment No. 3 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 2.<sup>10</sup> On December 19, 2019, the Exchange filed Amendment No. 4 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 3.<sup>11</sup> The Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 4 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 4, on an accelerated basis.

#### I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 4

The Exchange proposes to list and trade shares of the KFA Global Carbon ETF under NYSE Arca Rule 8.600–E (“Managed Fund Shares”). This Amendment No. 4 to SR–NYSEArca–2019–60 replaces SR–NYSEArca–2019–60 as originally filed and Amendments 1, 2 and 3 thereto and supersedes such filings in their entirety. The proposed change is available on the Exchange's website at [www.nyse.com](http://www.nyse.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 self-regulatory organization 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 those 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 parts of such statements.

<sup>9</sup> See Securities Exchange Act Release No. 87589, 84 FR 65862 (Nov. 29, 2019).

<sup>10</sup> Amendment No. 3 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2019-60/srnysearca201960-6555837-200935.pdf>.

<sup>11</sup> Amendment No. 4 is available on the Commission's website at: <https://www.sec.gov/comments/sr-nysearca-2019-60/srnysearca201960-6567293-201062.pdf>.

<sup>44</sup> See Amendment No. 3, *supra* note 9.

<sup>45</sup> 15 U.S.C. 78s(b)(2).

<sup>46</sup> 15 U.S.C. 78s(b)(2).

<sup>47</sup> 17 CFR 200.30–3(a)(12).