

to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>22</sup> the Commission is providing notice of the grounds for possible disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act,<sup>23</sup> which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "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."<sup>24</sup> The Commission believes that several of the proposed rule changes are not consistent with the CAT NMS Plan or exemptive relief that has been granted as of the date of this Order.

#### IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5)<sup>25</sup> or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,<sup>26</sup> any request for an opportunity to make an oral presentation.<sup>27</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or

disapproved by May 26, 2020. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 9, 2020. 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 Numbers SR-CBOE-2020-004 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-CBOE-2020-004. 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-CBOE-2020-004 and should be submitted on or before May 26, 2020. Rebuttal comments should be submitted by June 9, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33859; 812-14774-02]

### USCF Advisers LLC, et al.

April 30, 2020.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X ("Disclosure Requirements"). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

**APPLICANTS:** USCF ETF Trust (the "Trust"), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series; USCF Cayman Commodity 2 (the "Commodity Strategy Subsidiary"), a Cayman Islands corporation wholly owned by the USCF SummerHaven Dynamic Commodity Strategy No K-1 Fund (the "Commodity Strategy Fund"), a series of the Trust; and USCF Advisers LLC, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 ("USCF Advisers" or the "Advisor," and, collectively with the Trust and the Commodity Strategy Subsidiary, the "Applicants").

**FILING DATES:** The application was filed May 15, 2017, and amended on December 26, 2019, April 2, 2020, and April 30, 2020.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 17 CFR 240.19b-4.

<sup>27</sup> Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on May 26, 2020, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. Applicants: Attn: General Counsel, *exemptivenotices@uscfinvestments.com*.

**FOR FURTHER INFORMATION CONTACT:** Jill Ehrlich, Senior Counsel, at (202) 551–6819, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551–8090.

### Summary of the Application

1. The Advisor serves as the investment adviser to the Funds (as defined below) pursuant to investment advisory agreements with the Funds (the "Advisory Agreements").<sup>1</sup> The Advisor will provide the Funds with continuous and comprehensive investment management services subject to the supervision of, and policies established by, each Fund's board of trustees ("Board"). The Advisory Agreements permit the Advisor, subject to the approval of the Board, to delegate

<sup>1</sup> Applicants request relief with respect to any existing or future series of the Trust and any other registered open-end management investment company or series thereof that: (a) Is advised by USCF Advisers or any entity controlling, controlled by or under common control with USCF Advisers or its successors (each, also an "Advisor"); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the application (any such series, including the Commodity Strategy Fund, a "Fund"). For purposes of the requested order, "successor" is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

to one or more sub-advisors (each, a "Subadvisor" and collectively, the "Subadvisors") the responsibility to provide the day-to-day portfolio investment management of each Fund (either directly or through such Fund's direct wholly-owned subsidiary), subject to the supervision and direction of the Advisor. The primary responsibility for managing the Funds will remain vested in the Advisor. The Advisor will hire, evaluate, allocate assets to and oversee the Subadvisors, including determining whether a Subadvisor should be terminated, at all times subject to the authority of the Board.

2. Each Fund may pursue its investment strategies by investing through a direct wholly-owned subsidiary (each such subsidiary, including the Commodity Strategy Subsidiary, a "Subsidiary"). The Advisor has entered into an investment advisory agreement with the Commodity Strategy Subsidiary (the "Commodity Strategy Subsidiary Advisory Agreement"), and any future Subsidiary will enter into an investment advisory agreement with the respective Advisor (together with the Commodity Strategy Subsidiary Advisory Agreement, the "Subsidiary Advisory Agreements").<sup>2</sup> In all cases, an Advisor will be the entity providing general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets (either directly or through such Fund's Subsidiary, if any), and, subject to review and approval of the Board, will: (a) Set such Fund's (including, if any, its Subsidiary's) overall investment strategies; (b) evaluate, select and recommend Subadvisors to manage all or a portion of the Fund's assets (directly or through the Fund's Subsidiary, if any); (c) allocate and, when appropriate, reallocate the Fund's assets among one or more Subadvisors (including by allocating and reallocating assets between and among the Fund and, if any, its Subsidiary); (d) monitor and evaluate the performance of Subadvisors; and (e) implement procedures reasonably designed to ensure that the Subadvisors comply with the investment objective, policies

<sup>2</sup> The Commodity Strategy Subsidiary Advisory Agreement has been, and any future Subsidiary Advisory Agreement will be, approved by the Board, including a majority of the trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act) of the Fund or the Advisor, and the Fund's shareholders.

and restrictions of the Fund and the Subsidiary, if any.

3. Applicants request an order exempting Applicants from section 15(a) of the Act and rule 18f–2 thereunder to permit the Trust, on behalf of a Fund, and/or its Advisor, subject to the approval of the Board, to enter into and materially amend investment subadvisory agreements with Subadvisors ("Subadvisory Agreements") without obtaining shareholder approval.<sup>3</sup> Applicants also seek an exemption from the Disclosure Requirements to permit a Fund to disclose (as both a dollar amount and a percentage of the Fund's net assets): (a) The aggregate fees paid to the Advisor and any Excluded Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Excluded Subadvisors (collectively, "Aggregate Fee Disclosure"). For any Fund that employs an Excluded Subadvisor, the Fund will provide separate disclosure of any fees paid to the Excluded Subadvisor.

4. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Fund shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Funds' shareholders.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Advisory Agreements will remain subject to shareholder approval, while the role of the Subadvisors is substantially similar to that of individual portfolio managers, so that requiring shareholder approval of Subadvisory Agreements would impose unnecessary delays and expenses on the Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Advisor's

<sup>3</sup> The requested relief will not extend to any sub-adviser who is an affiliated person, as defined in section 2(a)(3) of the Act, of a Fund or an Advisor other than by reason of serving as a sub-adviser to one or more Funds (or any Subsidiary) ("Excluded Subadvisors").

ability to negotiate fees paid to the Subadvisors that are more advantageous for the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88772; File No. SR-CboeEDGA-2020-003]

### Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule ("Compliance Rule") Regarding the National Market System Plan Governing the Consolidated Audit Trail (the "CAT NMS Plan" or "Plan"), To Be Consistent With Certain Proposed Amendments To and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

April 29, 2020.

#### I. Introduction

On January 22, 2020, Cboe EDGA Exchange, Inc. ("Cboe EDGA" or "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 amend the Exchange's compliance rules regarding the National Market System Plan Governing the Consolidated Audit Trail ("CAT NMS Plan").<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.<sup>4</sup> On March 20, 2020, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to

May 5, 2020.<sup>5</sup> The Commission received no comments on the proposal. This order institutes proceedings pursuant to Exchange Act Section 19(b)(2)(B) to determine whether to approve or disapprove File No. SR-CboeEDGA-2020-003.<sup>6</sup>

#### II. Description of the Proposed Rule Change

The Exchange proposes to amend certain rules within Rules 4.5 through 4.16 of the Exchange's rulebook ("Compliance Rule"), which sets forth rules regarding Industry Member<sup>7</sup> compliance with the CAT NMS Plan. Specifically, the proposed rule change would make the following changes to the Compliance Rule to be consistent with certain proposed amendments to and exemption requests submitted by the Participants<sup>8</sup> of the CAT NMS Plan: (1) Revise data reporting requirements for the Firm Designated ID<sup>9</sup> based on a proposed amendment to the CAT NMS Plan filed with the Commission;<sup>10</sup> (2) amend the dates for required testing and reporting in the Compliance Rule for Industry Member reporting;<sup>11</sup> (3) amend

<sup>5</sup> See Securities Exchange Act Release No. 88446, 85 FR 17151 (March 26, 2020).

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

<sup>7</sup> Industry Member means a member of a national securities exchange or a member of a national securities association. See CAT NMS Plan, *supra* note 3, at Section 1.1.

<sup>8</sup> The Participants include BOX Exchange LLC, Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Miami International Securities Exchange LLC, MIAA Emerald, LLC, MIAA PEARL, LLC, Nasdaq BX, Inc., Nasdaq GEMX, LLC, Nasdaq ISE, LLC, Nasdaq MRX, LLC, Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.

<sup>9</sup> As proposed, "Firm Designated ID" would mean a unique and persistent identifier for each trading account designated by Industry Members for purposes of providing data to the Central Repository, where each such identifier is unique among all identifiers from any given Industry Member; provided, however, such identifier may not be the account number for such trading account if the trading account is not a proprietary account. See proposed Exchange Rule 4.5.

<sup>10</sup> See Notice, *supra* note 4, at 6660. See also Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair re: Notice of Filing of Amendment to the National Market System Plan Governing the Consolidated Audit Trail (April 14, 2020). The Commission has not approved or disapproved the changes proposed in this amendment.

<sup>11</sup> See Notice, *supra* note 4, at 6664-68. On February 19, 2020, the Participants submitted a request for exemptive relief from the reporting dates required by the CAT NMS Plan. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Industry

the rules to require Industry Members to submit trade reports for executions and cancellations for cancelled trades to the FINRA's Trade Reporting Facilities, FINRA's OTC Reporting Facility or FINRA's Alternative Display Facility;<sup>12</sup> (4) revise the timestamp granularity requirement to require Industry Members with order handling or execution systems that utilize time stamps in increments finer than milliseconds to report timestamps up to nanoseconds when reporting Industry Member data<sup>13</sup> to the Central Repository;<sup>14</sup> (5) revise the reporting requirements for circumstances in which an Industry Member uses an established trading relationship for an individual Customer, instead of an account, on the order reported to CAT;<sup>15</sup> and (6) revise the CAT reporting

Member Reporting Dates (Feb. 19, 2020). On April 20, 2020, the Commission granted limited exemptive relief to allow for the implementation of phased reporting for Industry Members. See Securities Exchange Act Release No. 88702 (April 20, 2020), 85 FR 23075 (April 24, 2020).

<sup>12</sup> See Notice, *supra* note 4, at 6668-69. On February 12, 2020, the Participants submitted a request for exemptive relief from the requirement in Sections 6.4(d)(ii)(A)(2) and (B) of the CAT NMS Plan to require Industry Members to record and report, if an order is executed, the SRO-Assigned Market Participant Identifier of the clearing broker, and if a trade is cancelled, the cancelled trade indicator. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to FINRA Facility Data Linkage (Feb. 12, 2020). If granted, the exemptive relief would revise CAT reporting requirements regarding cancelled trades and SRO-Assigned Market Participant Identifiers of clearing brokers, if applicable, in connection with order executions, as such information would be available from FINRA's trade reports submitted to CAT.

<sup>13</sup> See Notice, *supra* note 4, at 6669. On February 3, 2020, the Participants filed a request for exemptive relief from the current CAT NMS Plan requirement to record and report Industry Member Data with time stamps consistent with their system, a requirement from which the Exchange requests an exemption. See Letter to Vanessa Countryman, Secretary, SEC, from Michael Simon, CAT NMS Plan Operating Committee Chair, re: Request for Exemption from Certain Provisions of the National Market System Plan Governing the Consolidated Audit Trail related to Granularity of Timestamps and Relationship Identifiers (Feb. 3, 2020). On April 8, 2020, the Commission granted the exemptive relief for timestamp granularity. See Securities Exchange Act Release No. 88608 (April 8, 2020), 85 FR 20743 (April 14, 2020).

<sup>14</sup> The Central Repository, as defined in the CAT NMS Plan, means "the repository responsible for the receipt, consolidation, and retention of all information reported to the CAT pursuant to SEC Rule 613 and this Agreement." See CAT NMS Plan, *supra* note 3, at Section 1.1.

<sup>15</sup> See Notice, *supra* note 4, at 6669-70. On February 3, 2020, the Participants filed a request for exemptive relief from the CAT NMS Plan requirement that Participants, through their Compliance Rules, require Industry Members to record and report to the Central Repository the account number, the date account opened, and the account type for individual customers in

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The CAT NMS Plan was approved by the Commission, as modified, on November 15, 2016. See Securities Exchange Act Release No. 79318 (November 15, 2016), 81 FR 84696 (November 23, 2016).

<sup>4</sup> See Securities Exchange Act Release No. 88102 (January 30, 2020), 85 FR 6659 ("Notice").