

changes. Because ports are used by member organizations to trade electronically on the Exchange, fees associated with ports are subject to these same competitive forces. The Exchange therefore believes that the proposal would not impose an undue burden on intermarket competition because the purpose of this filing is not to change the rates charged for ports or to offset the Exchange's continuing costs of supporting legacy ports but rather to provide member organizations with more time to effect an orderly transition to upgraded technology without needing to incur any additional costs.

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

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>23</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>24</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>25</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-99 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-NYSE-2020-99. 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-NYSE-2020-99, and should be submitted on or before January 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-27842 Filed 12-17-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-90659; File No. SR-CboeBZX-2020-070]

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the -1x Short VIX Futures ETF, a Series of VS Trust, Under Rule 14.11(f)(4) ("Trust Issued Receipts")**

December 14, 2020.

**I. Introduction**

On September 4, 2020, 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")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to list and trade shares ("Shares") of the -1x Short VIX Futures ETF ("Fund"), a series of VS Trust ("Trust"), under BZX Rule 14.11(f)(4) (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on September 23, 2020.<sup>3</sup> On October 30, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</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>5</sup> The Commission has received no comments on the proposed rule change. The Commission is publishing this order to solicit comments on the proposed rule change from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

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

The Exchange proposes to list and trade Shares of the Fund<sup>7</sup> under BZX

<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. 89901 (Sept. 17, 2020), 85 FR 59836 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 90292, 85 FR 70678 (Nov. 5, 2020). The Commission designated December 22, 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>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> The Trust has filed a registration statement on Form S-1 under the Securities Act of 1933, dated August 26, 2020 (File No.333-248430) ("Registration Statement"). The Fund will not trade on the Exchange until the Registration Statement is effective.

<sup>23</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>24</sup> 17 CFR 240.19b-4(f)(2).

<sup>25</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts<sup>8</sup> on the Exchange. The Fund seeks to provide daily investment results (before fees and expenses) that correspond to the performance of the Short VIX Futures Index (SHORTVOL) (“Index”).<sup>9</sup>

Volatility Shares LLC (“Sponsor”), a Delaware limited liability company and a commodity pool operator, serves as the Sponsor of the Trust.<sup>10</sup> Tidal ETF Services LLC serves as the administrator; U.S. Bank National Association serves as custodian of the Fund and the Shares; U.S. Bancorp Fund Services, LLC serves as the sub-administrator and transfer agent; and Wilmington Trust Company is the sole trustee of the Trust.

The Index measures the daily inverse performance of a theoretical portfolio of first- and second-month futures contracts on the Cboe Volatility Index (“VIX”).<sup>11</sup> The Index is comprised of VIX futures contracts (“VIX Futures Contracts”).<sup>12</sup> Specifically, the Index components represent the prices of the two near-term VIX Futures Contracts,

<sup>8</sup> Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in “Financial Instruments,” defined in Rule 14.11(f)(4)(A)(iv) as any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>9</sup> The Index is sponsored by Cboe Global Indexes. The Index sponsor is not a registered broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a fire wall with respect to the broker-dealer affiliate regarding access to information concerning the composition of and/or changes to the Index. In addition, the Index Sponsor has implemented and will maintain procedures that are designed to prevent the use and dissemination of material, non-public information regarding the Index.

<sup>10</sup> The Sponsor is not a broker-dealer or affiliated with a broker-dealer. In the event that (a) the Sponsor becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio.

<sup>11</sup> The VIX is an index designed to measure the implied volatility of the S&P 500 over 30 days in the future. The VIX is calculated based on the prices of certain put and call options on the S&P 500. The VIX is reflective of the premium paid by investors for certain options linked to the level of the S&P 500.

<sup>12</sup> VIX Futures Contracts are measures of the market’s expectation of the level of VIX at certain points in the future, and as such, will behave differently than current, or spot, VIX. While the VIX represents a measure of the current expected volatility of the S&P 500 over the next 30 days, the prices of VIX Futures Contracts are based on the current expectation of what the expected 30-day volatility will be at a particular time in the future (on the expiration date).

replicating a position that rolls the nearest month VIX Futures Contract to the next month VIX Futures Contract on a daily basis in equal fractional amounts, resulting in a constant weighted average maturity of approximately one month.<sup>13</sup> The Index seeks to reflect the returns that are potentially available from holding an unleveraged short position in first- and second- month VIX Futures Contracts.<sup>14</sup>

To pursue its investment objective, the Fund would primarily invest in VIX Futures Contracts based on components of the Index. The Fund would primarily acquire short exposure to the VIX through VIX Futures Contracts, such that the Fund has exposure intended to approximate the Index at the time of the net asset value (“NAV”) calculation of the Fund.<sup>15</sup> However, in the event that the Fund is unable to meet its investment objective solely through investment in VIX Futures Contracts, it may invest in over-the-counter swaps referencing the Index or referencing particular VIX Futures Contracts comprising the Index (“VIX Swap Agreements”) <sup>16</sup> or in listed VIX options

<sup>13</sup> The roll period usually begins on the Wednesday falling 30 calendar days before the S&P 500 option expiration for the following month (“Cboe VIX Monthly Futures Settlement Date”) and runs to the Tuesday prior to the subsequent month’s Cboe VIX Monthly Futures Settlement Date.

<sup>14</sup> The Exchange states that because VIX Futures Contracts correlate to future volatility readings of VIX, while the VIX itself correlates to current volatility, the Index and the Fund should be expected to perform significantly different from the inverse of the VIX over all periods of time. Further, unlike the Index, the VIX, which is not a benchmark for the Fund, is calculated based on the prices of certain put and call options on the S&P 500. While the Index does not correspond to the inverse of the VIX, as it seeks short exposure to VIX, the value of the Index, and by extension the Fund, will generally rise as the VIX falls and fall as the VIX rises.

<sup>15</sup> The Exchange states the Fund’s NAV will be calculated at 4:00 p.m. E.T.

<sup>16</sup> The VIX Swap Agreements in which the Fund may invest may or may not be cleared. The Fund would only enter into VIX Swap Agreements with counterparties that the Sponsor reasonably believes are capable of performing under the contract and will post collateral as required by the counterparty. The Fund would seek, where possible, to use counterparties, as applicable, whose financial status is such that the risk of default is reduced; however, the risk of losses resulting from default is still possible. The Sponsor would evaluate the creditworthiness of counterparties on a regular basis. In addition to information provided by credit agencies, the Sponsor would review approved counterparties using various factors, which may include the counterparty’s reputation, the Sponsor’s past experience with the counterparty and the price/market actions of debt of the counterparty. The Fund may use various techniques to minimize OTC counterparty credit risk including entering into arrangements with counterparties whereby both sides exchange collateral on a mark-to-market basis. Collateral posted by the Fund to a counterparty in connection with uncleared VIX Swap Agreements is generally held for the benefit of the counterparty in a segregated tri-party account

contracts (“VIX Options Contracts,” and, together with VIX Futures Contracts and VIX Swap Agreements, “VIX Derivative Products”). The Fund may also invest in Cash or Cash Equivalents<sup>17</sup> that may serve as collateral to the Fund’s investments in VIX Derivative Products.<sup>18</sup>

The Fund would not be actively managed but rather would seek to remain fully invested in VIX Derivative Products (and Cash and Cash Equivalents as collateral) that provide exposure to the Index consistent with its investment objective without regard to market conditions, trends or direction. The Fund’s investment objective is a daily investment objective; that is, the Fund seeks to track the Index on a daily basis, not over longer periods.<sup>19</sup> Accordingly, each day, the Fund will position its portfolio so that it can seek to track the Index. The direction and extent of the Index’s movements each day will dictate the direction and extent of the Fund’s portfolio rebalancing. For example, if the level of the Index falls on a given day, net assets of the Fund would fall. As a result, exposure to the Index, through futures positions held by the Fund, would need to be decreased. The opposite would be the case if the level of the Index rises on a given day.

The time and manner in which the Fund would rebalance its portfolio is defined by the Index methodology but may vary from the Index methodology depending upon market conditions and other circumstances including the potential impact of the rebalance on the price of the VIX Futures Contracts. The Sponsor would seek to minimize the

at the custodian to protect the counterparty against non-payment by the Fund.

<sup>17</sup> For purposes of the proposal, “Cash and Cash Equivalents” are short-term instruments with maturities of less than 3 months, including the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers’ acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

<sup>18</sup> The Fund would collateralize its obligations with Cash and Cash Equivalents consistent with the 1940 Act and interpretations thereunder.

<sup>19</sup> The Exchange states that return of the Fund for a period longer than a single day is the result of its return for each day compounded over the period and usually would differ in amount and possibly even direction from either the inverse of the VIX or the inverse of a portfolio of short-term VIX Futures Contracts for the same period. These differences can be significant.

market impact of Fund rebalances on the price of VIX Futures Contracts by limiting the Fund's participation, on any given day, in VIX Futures Contracts to no more than one-quarter of the contracts traded on Cboe Futures Exchange during any "Rebalance Period" (defined by the Index methodology as 3:45 p.m.–4 p.m., E.T.) ("VIX Futures Contracts Limitation"). If the Fund's portfolio rebalance exceeds one-quarter of the futures' volume between 3:45 p.m. and 4 p.m., E.T., the Sponsor would extend the rebalance period (the "Extended Rebalance Period") to include, for example, the period between 4 p.m. and 4:15 p.m., E.T. and the Trade At Settlement market ("TAS").

The Sponsor expects that allowing the Fund to participate in an Extended Rebalance Period would minimize the impact on the price of VIX Futures Contracts, and particularly minimize any impact of large Fund rebalances during periods of market illiquidity.<sup>20</sup> The Exchange states that defining an explicit rebalancing methodology and limiting the Fund's participation in the VIX Futures Contracts should reduce the impact of the Fund's rebalancing on the price of VIX Futures Contracts.

### III. Proceedings To Determine Whether to Approve or Disapprove SR-CboeBZX-2020-070 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>21</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on 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 disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal's consistency with Section 6(b)(5) of the Act, 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 protect investors and the public interest."<sup>23</sup>

### IV. Procedure: Request for Written 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 proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.<sup>24</sup>

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 8, 2021. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 22, 2021.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,<sup>25</sup> in addition to any other comments they may wish to submit about the proposed rule change. In this regard, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Shares, which seek to provide daily investment results that correspond to the performance of an index that measures the daily inverse performance of a theoretical portfolio of first- and second-month VIX Futures Contracts, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

principles of trade, and to protect investors and the public interest, and is consistent with the maintenance of a fair and orderly market under the Act. The Commission also seeks commenters' views regarding whether the Exchange has adequately described the potential impact of sudden fluctuations in market volatility on the Index and on the Fund's operation and performance for the Commission to make a determination under Section 6(b)(5) of the Act. In particular, the Commission seeks comment regarding the Fund's operation during periods with large percentage increases in volatility, and whether the Sponsor's proposed VIX Futures Contracts Limitation would sufficiently minimize the market impact of the Fund's daily rebalance.

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-2020-070 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.
- All submissions should refer to File Number SR-CboeBZX-2020-070. 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

<sup>20</sup> The Sponsor believes that the Fund would enter an Extended Rebalance Period most often during periods of extraordinary volatility or illiquidity in VIX futures contracts.

<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>22</sup> *Id.*

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

<sup>24</sup> Section 19(b)(2) of the 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>25</sup> See *supra* note 3.

cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2020-070 and should be submitted by January 8, 2021. Rebuttal comments should be submitted by January 22, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>26</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90653; File No. SR-NYSE-2020-98]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Its Rules To Prohibit Member Organizations From Seeking Reimbursement, in Certain Circumstances, From Issuers for Forwarding Proxy and Other Materials to Beneficial Owners

December 14, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 30, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to prohibit member organizations from seeking reimbursement from issuers for forwarding proxy and other materials to beneficial owners who received shares from their broker at no cost or at a price substantially less than the market price in connection with a promotion by the broker. The proposed

rule 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.

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

###### 1. Purpose

NYSE Rule 451 requires NYSE member organizations that hold securities for beneficial owners in street name to solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of issuers.<sup>4</sup> For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution. This reimbursement structure stems from SEC Rules 14b-1 and 14b-2 under the Act,<sup>5</sup> which impose obligations on companies and nominees to ensure that beneficial owners receive proxy materials and are given the opportunity to vote. These rules require companies to send their proxy materials to nominees, *i.e.*, broker-dealers or banks that hold securities in street name, for forwarding to beneficial owners and to pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners. Similarly, Rule 465 requires member organizations to forward issuer communications to

beneficial owners on behalf of issuers subject to receipt of reimbursement of expenses.

Recently, brokers providing retail brokerage services have developed a practice in which customers are given securities without charge as a commercial incentive (for example, upon opening a new account or referring a new customer to the broker). Typically, these incentives involve the transfer of a small number of shares to benefiting customers and result in the customer having a position in the company whose shares they receive that has a very small dollar value. Rule 451 does not distinguish between these beneficial owners and beneficial owners that have paid for their shares, so brokers are required to solicit proxies from these accounts and are entitled to reimbursement of their expenses under Rules 451 and 465, as well as pursuant to the applicable rules of any other national securities exchange or national securities association of which the NYSE member organization is a member.<sup>6</sup> As a consequence, issuers are billed under Exchange rules and the rules of other SROs for the reimbursement of expenses the broker incurs in making distributions to these beneficial owners who have very small positions, which they acquired from their broker without any payment by the customer. In certain cases, the issuer can experience a significant increase in its distribution reimbursement expenses solely due to its shares being included in these broker promotional schemes.

While the distribution of shares in these broker promotions may result in a significant increase in the number of beneficial owners of an issuer’s stock, the generally very small size of each of these positions means that they usually represent a very small percentage of the voting power. As such, the costs the issuer incurs in reimbursing the broker for distributing proxies to these accounts is very disproportionate to the maximum potential vote such shares represent. By contrast, the broker using such a scheme chooses to engage in it because it believes that it will result in a commercial benefit to the broker. Consequently, the Exchange believes that it is more appropriate for the broker to bear these proxy distribution costs. Accordingly, the Exchange proposes new Rule 451A, which would provide that, notwithstanding the applicable provisions of Rules 451 or 465 or what may be permitted by the rules of any other national securities exchange or national securities association of which a member organization is also a

<sup>4</sup> The ownership of shares in street name means that a shareholder, or “beneficial owner,” has purchased shares through a broker-dealer or bank, also known as a “nominee.” In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company. For more detail regarding share ownership, see Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42982 (July 22, 2010) (Concept Release on the U.S. Proxy System) (“Proxy Concept Release”).

<sup>5</sup> 17 CFR 240.14b-1; 17 CFR 240.14b-2.

<sup>6</sup> See, for example, FINRA Rule 2251.

<sup>26</sup> 17 CFR 200.30-3(a)(57).

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.