

to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s)*: MC2022-21 and CP2022-23; *Filing Title*: USPS Request to Add Priority Mail & First-Class Package Service Contract 209 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: November 19, 2021; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Kenneth R. Moeller; *Comments Due*: November 30, 2021.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2021-25831 Filed 11-24-21; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34421; 812-15258]

Bow River Capital Evergreen Fund, et al.

November 19, 2021.

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

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges ("EWCs").

Applicants: Bow River Capital Evergreen Fund (the "Initial Fund"), and Bow River Asset Management LLC (the "Adviser").

Filing Dates: The application was filed on August 25, 2021, and amended on October 12, 2021, and November 5, 2021.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at Secretaries-Office@sec.gov and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2021, and should be accompanied by proof of service on 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.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: 205 Detroit Street, Suite 800, Denver, CO 80206.

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated November 5, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at <http://www.sec.gov/search/search.htm>, or by calling (202) 551-8090.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-25722 Filed 11-24-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93629; File No. SR-NYSE-2021-53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving of a Proposed Rule Change To Amend the Shareholder Voting Requirement Set Forth in Section 312.07 of the NYSE Listed Company Manual

November 19, 2021.

I. Introduction

On September 15, 2021, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Section 312.07 of the NYSE Listed Company Manual ("Manual") to address the calculation of votes cast where shareholder approval is required. The proposed rule change was published for comment in the **Federal**

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Register on October 5, 2021.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Section 312.07 of the Manual to address the calculation of “votes cast” when a matter requires shareholder approval, particularly as the calculation relates to abstention votes.⁴ Section 312.07 of the Manual currently provides that where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter.⁵ The Exchange states that the text of Section 312.07 of the Manual does not specifically address a listed company’s treatment of abstentions in the company’s calculation of votes cast by shareholders.⁶ However, the Exchange states that it has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07 of the Manual.⁷ According to the Exchange, under that approach a proposal is deemed approved under Section 312.07 of the Manual only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions.⁸ The Exchange states that its current treatment of abstentions has caused confusion among listed companies because the corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote includes yes and no votes—but not abstentions—such that a proposal succeeds if the

votes in favor exceed the votes cast against.⁹

To avoid further confusion, the Exchange proposes to amend Section 312.07 to provide that with respect to a matter that requires shareholder approval subject to the minimum vote required for such shareholder approval under Section 312.07, a company must calculate the votes cast in accordance with its own governing documents and any applicable state law.¹⁰ The Exchange believes that this treatment of abstentions will avoid any complications engendered among issuers and shareholders when different voting standards are applied under the Exchange rule, a company’s governing documents, and/or applicable state laws.¹¹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹² In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ 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, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange is proposing to amend Section 312.07 of the Manual to make clear how to calculate the votes cast when any matter requires shareholder approval to be approved by a majority of votes cast under Section 312.07, particularly to address the calculation as it relates to abstention votes. As described above, the Exchange is

proposing to amend Section 312.07 of the Manual to provide that for purposes of calculating shareholder approval, a company must calculate the votes cast in accordance with its governing documents and any applicable state law.¹⁴ The Exchange’s proposal, as it states in its filing, does not prescribe a particular way to calculate votes cast under Section 312.07 of the Manual but rather allows a listed company to rely on its governing documents and state law and is a change from the Exchange’s historical interpretation on how to calculate abstentions for purposes of votes cast under Section 312.07 of the Manual. While the proposed amendment to Section 312.07 of the Manual does not address the treatment of abstentions explicitly, the Commission believes the proposed changes to Section 312.07 of the Manual provides clear guidance to a listed company that the company’s own governing documents and the state law applicable to such listed company must govern the way that a company calculates votes cast on a matter for purposes of meeting the minimum vote requirements under the Exchange’s rule. As such, the proposed rule language will make clear that the listed company’s own governing documents and applicable state law also will govern how a listed company should count abstentions. As a result, the Commission believes that the proposed amendment is consistent with Section 6(b)(5) of the Act because it will add clarity to the Exchange’s rules and help eliminate any confusion about what authority governs the treatment of votes cast in general and abstentions in particular, including the possibility that the Exchange’s own guidance about the treatment of abstentions might conflict with the treatment of abstentions under the listed company’s governing documents or state law applicable to such listed company.

Finally, by setting forth in the Exchange’s rules that corporate documents and applicable state law should be relied on by all listed companies and shareholders in determining how votes cast are calculated, including the treatment of abstentions, for purposes of determining whether a matter meets the minimum vote requirements (*i.e.*, “a majority of votes cast”) of Section 312.07, the proposal should provide transparency to

³ See Securities Exchange Act Release No. 93192 (September 29, 2021), 86 FR 55071 (“Notice”).

⁴ See Notice, *supra* note 3, 86 FR 55072.

⁵ According to the Exchange, shareholder approval is required for equity compensation plans under Sections 303A.08 of the Manual (“Shareholder Approval of Equity Compensation Plans”) and in the specific situations set out in 312.03 of the Manual (“Shareholder Approval”). See *Id.* The Exchange also notes that Item 21(b) of Schedule 14A requires companies soliciting proxies to disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as the company’s charter and bylaw provisions. See *Id.*

⁶ See Notice, *supra* note 3, at 55072.

⁷ See *Id.*

⁸ See *Id.*

⁹ See *Id.* The Exchange added that, consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast. See *Id.*

¹⁰ See *Id.* The Exchange notes that while Nasdaq is silent on the treatment of abstentions in its rules, Nasdaq published a FAQ stating that companies must calculate voting in accordance with their own governing documents and applicable state law. See *Id.*

¹¹ See *Id.*

¹² In approving this proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ The Exchange noted that Nasdaq has an FAQ that is also consistent with this approach. See *supra* note 10.

market participants consistent with the Act.¹⁵

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NYSE-2021-53) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-25755 Filed 11-24-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93633; File No. SR-EMERALD-2021-41]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the “Fee Schedule”).

The text of the proposed rule change is available on the Exchange’s website at <https://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, and at the Commission’s Public Reference Room.

¹⁵ Shareholders should have access to a company’s governing documents that indicate how abstentions are treated under the applicable voting standard, such as articles of incorporation and bylaws, as they are required to be filed as exhibits under Item 601 of Regulation S-K for domestic issuers and under Form 20-F for foreign private issuers. See also *supra* note 5 and Item 21 of Schedule 14A that applies to domestic issuers.

¹⁶ Id.

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to (i) amend the Fee Schedule to amend the exchange groupings of options exchanges within the routing fee table in Section 1(b) of the Fee Schedule, Fees for Customer Orders Routed to another Options Exchange; and (ii) make a minor, non-substantive edit to correct a typographical error. The Exchange initially filed this proposal on October 27, 2021 (SR-EMERALD-2021-35) and withdrew such filing on November 8, 2021. The Exchange proposes to implement the fee change effective November 8, 2021.

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Interval Program³ (“Penny classes”) or an order for standard option classes which are not in the Penny Interval Program (“Non-Penny classes”) (or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange’s affiliates, Miami International Securities Exchange, LLC (“MIAX”) and MIAX PEARL, LLC (“MIAX Pearl”). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (“Cboe BZX Options”), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange

³ See Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR-EMERALD-2020-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category, dependent upon the order’s origin type and whether it is a Penny or Non-Penny class.⁴

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to better reflect the associated costs of routing customer orders to those options exchanges for execution.⁵ In particular, the Exchange proposes to amend the exchange groupings in the first row of the table identified as, “Routed, Priority Customer, Penny Program,” to relocate Nasdaq BX Options from the first row of the table to the second, also identified as, “Routed, Priority Customer, Penny Program.” The impact of this proposed change will be that the routing fee for Priority Customer orders in the Penny Program that are routed to Nasdaq BX Options will increase from \$0.15 to \$0.65. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the third row of the table, identified as “Routed, Priority Customer, Non-Penny Program,” to relocate Nasdaq BX Options from the third row of the table to the fourth, also identified as, “Routed, Priority Customer, Non-Penny Program.” The impact of this proposed change will be that the routing fee for Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options will increase from \$0.15 to \$1.00. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the sixth row of the table identified as, “Routed, Public Customer that is not a Priority Customer, Non-Penny Program,” to relocate Nasdaq ISE from

⁴ See Cboe U.S. Options Fee Schedules, BZX Options, effective August 2, 2021, “Fee Codes and Associated Fees,” at https://www.cboe.com/us/options/membership/fee_schedule/bzx/.

⁵ Nasdaq BX established a Customer Taker fee of \$0.46 in Penny Classes and \$0.65 in Non-Penny Classes. See Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR-BX-2021-009). Nasdaq BX recently increased the Customer Taker fee in Non-Penny Classes from \$0.65 to \$0.79. See Securities Exchange Act Release No. 93121 (September 24, 2021), 86 FR 54259 (September 30, 2021) (SR-BX-2021-040).