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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2019 - * 047

Amendment No. (req. for Amendments *) 2

Filing by Cboe BZX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *

☐

Amendment *

☒

Withdrawal

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Section 19(b)(2) *

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Section 19(b)(3)(A) *

☐

Section 19(b)(3)(B) *

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Rule

Pilot

☐

Extension of Time Period
for Commission Action *

☐

Date Expires *

☐ 19b-4(f)(1)

☐ 19b-4(f)(2)

☐ 19b-4(f)(3)

☐ 19b-4(f)(4)

☐ 19b-4(f)(5)

☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Kyle

Last Name * Murray

Title * Assistant General Counsel

E-mail * kmurray@cboe.com

Telephone * (913) 815-7121

Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 09/23/2019

By Kyle Murray

(Name *)

Assistant General Counsel

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

kmurray@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on May 6, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Kyle Murray, Assistant General Counsel, (913) 815-7121.

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

(a) Purpose

This Amendment No. 2 to SR-CboeBZX-2019-047 amends and replaces in its entirety the proposal as amended by Amendment No. 1, which was submitted on September 20, 2019, which amended and replaced in its entirety the proposal as

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

originally submitted on June 5, 2019. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company.³

Proposed Listing Rules

The proposed change to Rule 14.11(a) would amend the rule to include any statements or representations regarding the Verified Intraday Indicative Values included in any filing to list a series of Managed Portfolio Shares as constituting continued listing requirements for such securities listed on the Exchange.

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

³ The basis of this proposal is an amended application for exemptive relief that was filed on April 4, 2019 (the “Application”) and for which public notice was issued on April 8, 2019 (the “Notice”) (File No. 812-14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC (“Precidian”); Precidian ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the “Order” and, collectively, with the Application and the Notice, the “Exemptive Order”). The 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.” See Investment Company Act Release Nos. 33440 and 33477.

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(k)(2)(A) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(B) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.⁴

Proposed Rule 14.11(k)(2)(C) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed 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

⁴ As defined in Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30a.m and 4:00pm Eastern Time.

affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such Investment Company portfolio and/or Creation Basket. 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, Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or Creation Basket.

Proposed Rule 14.11(k)(2)(E) provides that person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.

Proposed Rule 14.11(k)(3)(A) defines the term "Managed Portfolio Share" as 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, 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 SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, 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 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 calendar quarter.⁵

Proposed Rule 14.11(k)(3)(B) defines the term "Verified Intraday Indicative Value" ("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 by the Reporting Authority.

Proposed Rule 14.11(k)(3)(C) defines the term "AP Representative" as an unaffiliated broker-dealer 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 all consideration to or from the Investment Company in a creation

⁵ For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a "Fund" and shares of a series of Managed Portfolio Shares are generally referred to as the "Shares".

or redemption. An AP Representative will be restricted from disclosing the Creation Basket.

Proposed 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.

Proposed 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 that are required for an AP Representative 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 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.

Proposed 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.

Proposed 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 AP in return for a portfolio of instruments and/or cash.

Proposed 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 NAV, the VIIV, 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.

Proposed Rule 14.11(k)(3)(I) provides that the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(k)(4)(A) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the

Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 14.11(k)(4)(B)(iii) 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 a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time,

the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (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) and such issue persists past the trading day in which it occurred; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any 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; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations, as defined in Rule 14.11(a), for the issue of Managed Portfolio Shares are not continuously met; or (g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(k)(4)(B)(iii)(a) provides that, upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company’s investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its

agent notifies the Exchange that the condition or conditions necessary for the resumption of trading have been met.⁶

Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that, if the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value 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, it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available to all market participants as required.

Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

⁶ As provided in the Application, such conditions would exist where either: (i) the intraday indicative values calculated by the pricing verification agent(s) 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. The Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable after receipt of notification of the existence of such conditions. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that these conditions no longer exist.

Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 14.11(k)(5), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(k)(6), which relates to disclosures, provides that the provisions of subparagraph (k)(6) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain

prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)),⁷ Managed Portfolio Shares differ from Managed Fund Shares in the following important respects.⁸ First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,⁹ the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements

⁷ The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016 (SR-BATS-2015-100) (order approving proposed rule change to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares).

⁸ The Exchange notes that these unique components of Managed Portfolio Shares were addressed in the Exemptive Order (specifically in the Application and Notice). Specifically, the Notice stated that the Commission “believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF’s secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.” See Application at 19-20.

⁹ BZX Rule 14.11(i)(3)(B) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of NAV at the end of the business day. Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

otherwise applicable to open-end investment companies registered under the 1940 Act.¹⁰

The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value - the VIIV - that reflects an estimated intraday value of a fund’s portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, and 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. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

¹⁰ Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

The Exchange, after consulting with various Lead Market Makers (“LMMs”)¹¹ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value as long as a VIIV is disseminated in one second intervals,¹² and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹³ For Managed

¹¹ As defined in Exchange Rule 11.8(e)(1)(B), the term LMM means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security. As defined in Exchange Rule 11.8(e)(1)(C), the term “LMM Security” means an ETP that has an LMM. As defined in Rule 11.8(e)(1)(D), the term “Minimum Performance Standards means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread.

¹² The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: “The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV.” See the Notice at 19.

¹³ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the

Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the "Registration Statement"), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge¹⁴ of a fund's underlying portfolio.¹⁵ This is similar to certain other existing exchange traded products (for

case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

¹⁴ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

¹⁵ APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the

example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, i.e. the Deposit Instruments or “Redemption Instruments” and the estimated “Balancing Amount” (if any),¹⁶ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be

maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

¹⁶ The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

effected through a Confidential Account¹⁷ with an AP Representative,¹⁸ which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.¹⁹ An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (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. The Funds will offer and redeem Creation Units and

¹⁷ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund’s Creation Basket or portfolio securities, such as a Fund’s custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁸ Each AP shall enter into its own separate Confidential Account with an AP Representative.

¹⁹ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

Redemption Units on a continuous basis at the NAV per Share next determined after receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds 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 required or determined permissible by the Fund, 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 Redemption Instruments through the AP Representative in their Confidential Account.²⁰

In the case of a creation, the AP²¹ would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of

²⁰ Funds 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.

²¹ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each 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 substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

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

Shares after the most recent prior Valuation Time.

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,” as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.²²

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. 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

²² A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

order, and then instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will receive as redemption proceeds using similar tactics.

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 a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²³ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

²³ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares²⁴ tendered for redemption at the Cut-Off time. The Custodian will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs and non-AP market participants will provide the AP Representative with a list of restricted securities applicable to the AP or non-AP market participants on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

²⁴ If the NAV of the Shares redeemed differs from the value of the securities delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio 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 Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 14.11(k)(2)(C), the Investment Company's investment adviser will upon request make available to the

Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because, while the Exchange can envision circumstances under which such information would be useful to the Exchange, specifically in testing for a Fund's compliance with any continued listing representations in the rule filing under Section 19(b) of the Act pursuant to which the Fund is listed on the Exchange, among others, the Exchange does not believe that there is value in the Exchange receiving such information every day, given its sensitivity. The Exchange does not believe that any of its real-time surveillances or reasons for halting a security, as further described below, would be enhanced by receiving such information and in addition does not believe that it makes sense to default to sharing the portfolio holdings unnecessarily on a daily basis.

The Exchange notes that the Exemptive Order restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.²⁵ As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or a substantively identical exemptive order would trade on markets that are a

²⁵ As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could 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. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e-4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions. See Notice at 12, footnote 24.

member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶

While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(k)(2)(A) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange’s surveillance procedures applicable to such series.

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

Trading Halts

As proposed above, the Exchange would halt trading as soon as practicable under the following circumstances: (a) upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company’s investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares; and (b) where 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

²⁶ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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, and will not resume trading in such series until such time as the VIIV, the net asset value, or the holdings are available to all market participants, as required (collectively, “Publicly Available Information Halts”).

Availability of Information

As noted above, Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at 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. Information regarding the previous day’s closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. 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 proposed Rule 14.11(k)(3)(B), 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.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). 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.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, 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 of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are 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.

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²⁷ in general and Section 6(b)(5) of the Act²⁸ 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 proposed Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made

²⁷ 15 U.S.C. 78f.

²⁸ 15 U.S.C. 78f(b)(5).

available to all market participants at the same time.²⁹ Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing criteria, as described above. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares 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 will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(k)(4)(B)(iii) 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 a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all

²⁹ Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

market participants at the same time, the holdings of such series of Managed Portfolio Shares 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) and such issue persists past the trading day in which it occurred; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any 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; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations, as defined in Rule 14.11(a), for the issue of Managed Portfolio Shares are not continuously met; or (g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(k)(4)(B)(iii)(a) provides that, upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until

the Investment Company or its agent notifies the Exchange that the condition or conditions necessary for the resumption of trading have been met.³⁰

Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that, if the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value 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, it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available to all market participants as required. Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that the Notice provides that an issuer will comply with

³⁰ As provided in the Application, such conditions would exist where either: (i) the intraday indicative values calculated by the pricing verification agent(s) 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. The Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable after receipt of notification of the existence of such conditions. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that these conditions no longer exist.

Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Managed Portfolio Shares.³¹

Proposed 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 and/or changes to such Investment Company portfolio and/or Creation Basket. 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, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or Creation Basket. Proposed Rule 14.11(k)(2)(E) provides that, any person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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

³¹ See Notice at 15.

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.³²

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of

³² The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that “Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act.” The notice goes on to say that an AP Representative “acting as an agent of another broker-dealer (“AP”) will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF’s Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP’s orders to purchase or redeem the ETF’s Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative.” The Order goes on to say “For the foregoing reasons, it is found 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.” See Order at 2, 3, and 4.

Managed Portfolio Shares because they provide 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 proposed Rule 14.11(k)(2)(E)³³ will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. 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, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets

³³ As described above, proposed Rule 14.11(k)(2)(E) provides that any person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.

priced near the VIIV, as long as market makers have knowledge of a Fund's means of achieving its investment objective, even without daily disclosure of a fund's underlying portfolio.³⁴ The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund's underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund's means of achieving its investment objective, as described in the applicable fund registration statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to

³⁴ The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: "The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF's secondary market prices close to its NAV." See the Notice at 19.

run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The LMMs also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by LMMs were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell

Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being “long” or “short” shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³⁵ or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities. Disclosure of a fund’s investment objective and principal investment strategies in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.³⁶

³⁵ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

³⁶ With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV’s correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that

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 a 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 a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded 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.³⁷

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account

benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

³⁷ The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for “free riding” or “front-running,” while still providing investors with the advantages of the ETF structure.

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 from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a 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 a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Funds 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 in one second intervals throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the 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 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 of a Fund may be inadvisable. Specifically, the Exchange would halt trading as soon as practicable under the following circumstances: (a) upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares; and (b) where 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, and will not resume trading in such series until such time as the VIIV, the net asset value, or the holdings are available to all market participants, as required.

The Exchange is proposing to rely on notice from the Investment Company or its agent of certain circumstances provided under the Investment Company's exemptive order or no-action relief to halt trading in a series of Managed Portfolio Shares (an

“Exemptive Halt”) and four scenarios under which the Exchange would halt trading upon becoming aware of certain circumstances. Specifically, the Exchange is proposing to rely on notice from the Investment Company or its agent to halt for an Exemptive Halt because the Exchange is not in a position to know or become aware of such circumstances without the Investment Company or its agent. As it relates to the Exemptive Halts provided in the Application and described above, the Exchange does not expect to act as a pricing verification agent and, as such, would not have access to such information without notice from the Investment Company or its agent and similarly will not have direct access to whether the pricing verification agent has readily available market quotations necessary to calculate the VIIV. Even if the Investment Company was providing the Exchange with the portfolio holdings on a daily basis,³⁸ the Exchange would not be in a position to determine whether market quotations are readily available to the Investment Company or its agent and whether such quotations are unavailable in holdings representing 10% or more of a Fund’s portfolio. Further, the Exchange believes that it is appropriate for the Exchange to halt under such circumstances because prior to listing on the Exchange, the Commission would have issued an order determining that it is appropriate to halt in those scenarios.³⁹

For each of the Publicly Available Information Halts, the scenario that triggers a

³⁸ As described above under “Surveillance,” proposed Rule 14.11(k)(2)(C), the Investment Company’s investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares, but it will not necessarily be providing such holdings on a daily basis.

³⁹ The Exemptive Halts are included in the Application and Notice on which the Order is based. See Application at 23 and 24, footnote 57, respectively, and Notice at 12, Footnote 25.

halt is based on information that is available to the Exchange, either because the information is publicly available, the information will flow through the Exchange prior to being publicly disseminated, or both, and, thus, the Exchange is proposing that these halts should be subject to the Exchange becoming aware of such circumstances. The Exchange notes, however, that this is in addition to an Investment Company's obligation of disclosure of noncompliance under Rule 14.11(a), which requires that a "Company with securities listed on the Exchange must provide the Exchange with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Rule 14.11." With this in mind, the Exchange becoming aware of any issue that would require a Publicly Available Information Halt could come through its own surveillances or through disclosure by an Investment Company. The Exchange further believes that these proposed reasons to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate;⁴⁰ (ii) the other Publicly Available Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that Rule 14.11(i)(4)(iv) related to trading halts in Managed Fund Shares⁴¹ is intended to

⁴⁰ See Application at 4 and Notice at 11.

⁴¹ Rule 14.11(i)(4)(iv) provides that "If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will

address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares;⁴² and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading.

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

halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Publicly Available Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

⁴² See, e.g., Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that “the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities” and that “the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs” and that “by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs”); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that “[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities”).

the listing and trading of an additional type of 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. The Exemptive Order also restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.⁴³ As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.⁴⁴ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(k)(2)(A) would require the Exchange to file

⁴³ As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could 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. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e-4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions.

⁴⁴ The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. 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.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of a new type of actively-managed exchange-traded products that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rule of Another Self-Regulatory Organization

or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1: Completed Notice of the Proposed Rule Change for publication in the Federal Register.

Exhibit 2 – 4: Not applicable.

Exhibit 5: Text of the proposed rule change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2019-047]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to Permit the Listing and Trading of Managed Portfolio Shares, which are Shares of Actively Managed Exchange-Traded Funds for which the Portfolio is Disclosed in Accordance with Standard Mutual Fund Disclosure Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) 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 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, which are shares of actively managed exchange-traded funds for which the portfolio is disclosed in accordance with standard mutual fund disclosure rules.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

This Amendment No. 2 to SR-CboeBZX-2019-047 amends and replaces in its entirety the proposal as amended by Amendment No. 1, which was submitted on September 20, 2019, which amended and replaced in its entirety the proposal as originally submitted on June 5, 2019. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to add new Rule 14.11(k) for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Managed Portfolio Shares, which are securities issued by an actively managed open-end management investment company.³

³ The basis of this proposal is an amended application for exemptive relief that was filed on April 4, 2019 (the "Application") and for which public notice was issued on April 8, 2019 (the "Notice") (File No. 812-14405) and subsequent order granting certain exemptive relief to Precidian Funds LLC ("Precidian"); Precidian

Proposed Listing Rules

The proposed change to Rule 14.11(a) would amend the rule to include any statements or representations regarding the Verified Intraday Indicative Values included in any filing to list a series of Managed Portfolio Shares as constituting continued listing requirements for such securities listed on the Exchange.

Proposed Rule 14.11(k)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of Rule 14.11(k).

Proposed Rule 14.11(k)(2) provides that Rule 14.11(k) is applicable only to Managed Portfolio Shares and that, except to the extent inconsistent with Rule 14.11(k), or unless the context otherwise requires, the rules and procedures of the Exchange's Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.11(k)(2) provides further that Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(k)(2)(A) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of

ETFs Trust and Precidian ETF Trust II; and Foreside Fund Services, LLC issued on May 20, 2019 (the "Order" and, collectively, with the Application and the Notice, the "Exemptive Order"). The 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." See Investment Company Act Release Nos. 33440 and 33477.

Managed Portfolio Shares.

Proposed Rule 14.11(k)(2)(B) provides that transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.⁴

Proposed Rule 14.11(k)(2)(C) provides that the Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares.

Proposed 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 and/or changes to such Investment Company portfolio and/or Creation Basket. 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, Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or Creation Basket.

Proposed Rule 14.11(k)(2)(E) provides that person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or

⁴ As defined in Rule 1.5(w), the term "Regular Trading Hours" means the time between 9:30a.m and 4:00pm Eastern Time.

administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.

Proposed Rule 14.11(k)(3)(A) defines the term "Managed Portfolio Share" as 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, 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 SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, 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 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 calendar quarter.⁵

Proposed Rule 14.11(k)(3)(B) defines the term "Verified Intraday Indicative Value" ("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 by the Reporting Authority.

Proposed Rule 14.11(k)(3)(C) defines the term "AP Representative" as an unaffiliated broker-dealer 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 all consideration to or from the Investment Company in a creation or redemption. An AP Representative will be restricted from disclosing the Creation Basket.

Proposed 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

⁵ For purposes of this filing, references to a series of Managed Portfolio Shares are referred to interchangeably as a series of Managed Portfolio Shares or as a "Fund" and shares of a series of Managed Portfolio Shares are generally referred to as the "Shares".

the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.

Proposed 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 that are required for an AP Representative 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 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.

Proposed 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.

Proposed 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 AP in return for a portfolio of instruments and/or cash.

Proposed 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 NAV, the VIIV, 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.

Proposed Rule 14.11(k)(3)(I) provides that the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

Proposed Rule 14.11(k)(4)(A) sets forth initial listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time. Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more

major market data vendors in one second intervals during Regular Trading Hours and will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the VIIV is interrupted pursuant to Rule 14.11(k)(4)(B)(iii) 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 a series of Managed Portfolio Shares because the NAV with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares are not made available on at least a quarterly basis as required under the Investment Company Act of 1940 (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) and such issue persists past the trading day in which it occurred; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any 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; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously

maintained; (f) if any of the applicable Continued Listing Representations, as defined in Rule 14.11(a), for the issue of Managed Portfolio Shares are not continuously met; or (g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(k)(4)(B)(iii)(a) provides that, upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the condition or conditions necessary for the resumption of trading have been met.⁶

Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that, if the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value 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

⁶ As provided in the Application, such conditions would exist where either: (i) the intraday indicative values calculated by the pricing verification agent(s) 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. The Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable after receipt of notification of the existence of such conditions. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that these conditions no longer exist.

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, it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available to all market participants as required.

Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

Proposed Rule 14.11(k)(5), which relates to limitation of Exchange liability, provides that neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the VIIV; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; NAV; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the

reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(k)(6), which relates to disclosures, provides that the provisions of subparagraph (k)(6) apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Managed

Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares).”

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)),⁷ Managed Portfolio Shares differ from Managed Fund Shares in the following important respects.⁸

⁷ The Commission approved a proposed rule change to adopt generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (order approving proposed rule change to amend Rule 14.11(i) to adopt generic listing standards for Managed Fund Shares).

⁸ The Exchange notes that these unique components of Managed Portfolio Shares were addressed in the Exemptive Order (specifically in the Application and Notice). Specifically, the Notice stated that the Commission “believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV. The Commission recognizes, however, that the lack of full transparency may cause the ActiveShares ETFs to trade with spreads and premiums/discounts that are larger than those of comparable, fully transparent ETFs. Nonetheless, as long as arbitrage continues to keep the ActiveShares ETF’s secondary market price and NAV close, and does so efficiently so that spreads remain narrow, the Commission believes that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the

First, in contrast to Managed Fund Shares, which require a “Disclosed Portfolio” to be disseminated at least once daily,⁹ the portfolio for a series of Managed Portfolio Shares will be disclosed at least quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.¹⁰ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in Creation Unit or Redemption Unit size (as described below), the delivery of any portfolio securities in kind will be effected through a Confidential Account (as described below) for the benefit of the creating or redeeming AP (as described further below in “Creation and Redemption of Shares”) without disclosing the identity of such securities to the AP.

For each series of Managed Portfolio Shares, an estimated value - the VIIV - that reflects an estimated intraday value of a fund’s portfolio will be disseminated. Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the

traditional benefits of ETFs.” See Application at 19-20.

⁹ BZX Rule 14.11(i)(3)(B) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of NAV at the end of the business day. Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

¹⁰ Form N-PORT requires reporting of a fund’s complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

opening of business on the current business day, and 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. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

The Exchange, after consulting with various Lead Market Makers (“LMMs”)¹¹ that trade exchange-traded funds (“ETFs”) on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the ETF’s intraday value as long as a VIIV is disseminated in one second intervals,¹² and market makers employ market making techniques such as “statistical arbitrage,” including correlation hedging, beta hedging, and dispersion trading, which is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.¹³ For Managed

¹¹ As defined in Exchange Rule 11.8(e)(1)(B), the term LMM means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security. As defined in Exchange Rule 11.8(e)(1)(C), the term “LMM Security” means an ETP that has an LMM. As defined in Rule 11.8(e)(1)(D), the term “Minimum Performance Standards” means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread.

¹² The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: “The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV.” See the Notice at 19.

¹³ Statistical arbitrage enables a trader to construct an accurate proxy for another instrument, allowing it to hedge the other instrument or buy or sell the instrument when it is cheap or expensive in relation to the proxy. Statistical analysis permits

Portfolio Shares, market makers may use the knowledge of a Fund's means of achieving its investment objective, as described in the applicable Fund registration statement (the "Registration Statement"), to construct a hedging proxy for a Fund to manage a market maker's quoting risk in connection with trading Fund Shares. Market makers can then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and Shares of a Fund, buying and selling one against the other over the course of the trading day. This ability should permit market makers to make efficient markets in an issue of Managed Portfolio Shares without precise knowledge¹⁴ of a fund's underlying

traders to discover correlations based purely on trading data without regard to other fundamental drivers. These correlations are a function of differentials, over time, between one instrument or group of instruments and one or more other instruments. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging proxy has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period making corrections where warranted. In the case of correlation hedging, the analysis seeks to find a proxy that matches the pricing behavior of a fund. In the case of beta hedging, the analysis seeks to determine the relationship between the price movement over time of a fund and that of another stock. Dispersion trading is a hedged strategy designed to take advantage of relative value differences in implied volatilities between an index and the component stocks of that index. Such trading strategies will allow market participants to engage in arbitrage between series of Managed Portfolio Shares and other instruments, both through the creation and redemption process and strictly through arbitrage without such processes.

¹⁴ Using the various trading methodologies described above, both APs and other market participants will be able to hedge exposures by trading correlative portfolios, securities or other proxy instruments, thereby enabling an arbitrage functionality throughout the trading day. For example, if an AP believes that Shares of a Fund are trading at a price that is higher than the value of its underlying portfolio based on the VIIV, the AP may sell Shares short and purchase securities that the AP believes will track the movements of a Fund's portfolio until the spread narrows and the AP executes offsetting orders or the AP enters an order through its AP Representative to create Fund Shares. Upon the completion of the Creation Unit, the AP will unwind its correlative hedge. Similarly, a non-AP market participant would be able to perform an identical

portfolio.¹⁵ This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U.S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

To protect the identity and weightings of the portfolio holdings, a series of Managed Portfolio Shares would sell and redeem their shares in Creation Units and Redemption Units to APs only through an AP Representative. As such, on each business day, before commencement of trading in Shares on the Exchange, each series of Managed Portfolio Shares will provide to an AP Representative of each AP the names and quantities of the instruments comprising a Creation Basket, i.e. the Deposit Instruments or “Redemption Instruments” and the estimated “Balancing Amount” (if any),¹⁶ for that day (as further described below). This information will permit APs to purchase Creation Units or redeem Redemption Units through an in-kind transaction with a Fund, as described below.

Creations and Redemptions of Shares

In connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be

function but, because it would not be able to create or redeem directly, would have to employ an AP to create or redeem Shares on its behalf.

¹⁵ APs that enter into their own separate Confidential Accounts shall have enough information to ensure that they are able to comply with applicable regulatory requirements. For example, for purposes of net capital requirements, the maximum Securities Haircut applicable to the securities in a Creation Basket, as determined under Rule 15c3-1, will be disclosed daily on each Fund’s website.

¹⁶ The Balancing Amount is the cash amount necessary for the applicable Fund to receive or pay to compensate for the difference between the value of the securities delivered as part of a redemption and the NAV, to the extent that such values are different.

effected through a Confidential Account¹⁷ with an AP Representative,¹⁸ which will be a broker-dealer such as broker-dealer affiliates of JP Morgan Chase, State Street Bank and Trust, or Bank of New York Mellon, for the benefit of an AP.¹⁹ An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the applicable distributor (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. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per Share next determined after

¹⁷ Transacting through a Confidential Account is designed to be very similar to transacting through any broker-dealer account, except that the AP Representative will be bound to keep the names and weights of the portfolio securities confidential. Each service provider that has access to the identity and weightings of securities in a Fund’s Creation Basket or portfolio securities, such as a Fund’s custodian or pricing verification agent, shall be restricted contractually from disclosing that information to any other person, or using that information for any purpose other than providing services to the Fund. To comply with certain recordkeeping requirements applicable to APs, the AP Representative will maintain and preserve, and make available to the Commission, certain required records related to the securities held in the Confidential Account.

¹⁸ Each AP shall enter into its own separate Confidential Account with an AP Representative.

¹⁹ Each Fund will identify one or more entities to enter into a contractual arrangement with the Fund to serve as an AP Representative. In selecting entities to serve as AP Representatives, a Fund will obtain representations from the entity related to the confidentiality of the Fund’s Creation Basket and portfolio securities, the effectiveness of information barriers, and the adequacy of insider trading policies and procedures. In addition, as a broker-dealer, Section 15(g) of the Act requires the AP Representative to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the AP Representative or any person associated with the AP Representative.

receipt of an order in proper form. The NAV per Share of each Fund will be determined as of the close of regular trading each business day. Funds will sell and redeem Creation Units and Redemption Units only on business days.

Each AP Representative will be given, before the commencement of trading each business day, the Creation Basket for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following business day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. In order to keep costs low and permit Funds 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 required or determined permissible by the Fund, 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 Redemption Instruments through the AP Representative in their Confidential Account.²⁰

In the case of a creation, the AP²¹ would enter into an irrevocable creation order with a Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP

²⁰ Funds 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.

²¹ An AP will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the AP has the ability to sell the basket securities at any point during Regular Trading Hours.

Representative would use methods such as breaking the purchase into multiple purchases and transacting in multiple marketplaces. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the applicable Fund.

Other market participants that are not APs will not have the ability to create or redeem shares directly with a Fund. Rather, if other market participants wish to create or redeem Shares in a Fund, they will have to do so through an AP.

Placement of Purchase Orders

Each 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 substantially similar to that of other ETFs. Each Fund will issue Shares only at the NAV per Share next determined after an order in proper form is received.

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

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,” as discussed below.

Generally, all orders to purchase Creation Units must be received by the Distributor no later than the end of Regular Trading Hours on the date such order is placed (“Transmittal Date”) in order for the purchaser to receive the NAV per Share determined on the Transmittal Date. In the case of custom orders made in connection with creations or redemptions in whole or in part in cash, the order must be received by the Distributor, no later than the Order Cut-Off Time.²²

Authorized Participant Redemption

The Shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by or through an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of a Fund will be redeemable at their NAV per Share next determined after receipt of a request for redemption by the Investment Company in the manner specified below before the Order Cut-Off Time. 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 instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative would be required to obfuscate the sale of the portfolio securities it will

²² A “custom order” is any purchase or redemption of Shares made in whole or in part on a cash basis, as provided in the Registration Statement.

receive as redemption proceeds using similar tactics.

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 a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

It is expected that redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash. The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption.²³ Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions.

After receipt of a Redemption Order, a Fund's custodian ("Custodian") will typically deliver securities to the Confidential Account with a value approximately equal to the value of the Shares²⁴ tendered for redemption at the Cut-Off time. The Custodian

²³ The terms of each Confidential Account will be set forth as an exhibit to the applicable Participant Agreement, which will be signed by each AP. The Authorized Participant will be free to choose an AP Representative for its Confidential Account from a list of broker-dealers that have signed confidentiality agreements with the Fund. The Authorized Participant will be free to negotiate account fees and brokerage charges with its selected AP Representative. The Authorized Participant will be responsible to pay all fees and expenses charged by the AP Representative of its Confidential Account.

²⁴ If the NAV of the Shares redeemed differs from the value of the securities

will make delivery of the securities by appropriate entries on its books and records transferring ownership of the securities to the AP's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative of the Confidential Account will in turn liquidate the securities based on instructions from the AP. The AP Representative will pay the liquidation proceeds net of expenses plus or minus any cash Balancing Amount to the AP through DTC. The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund pro rata. To the extent a Fund distributes portfolio securities through an in-kind distribution to more than one Confidential Account for the benefit of the accounts' respective APs, each Fund expects to distribute a pro rata portion of the portfolio securities selected for distribution to each redeeming AP.

If the AP would receive a security that it is restricted from receiving, for example if the AP is engaged in a distribution of the security, a Fund will deliver cash equal to the value of that security. APs and non-AP market participants will provide the AP Representative with a list of restricted securities applicable to the AP or non-AP market participants on a daily basis, and a Fund will substitute cash for those securities in the applicable Confidential Account.

The Investment Company will accept a Redemption Order in proper form. A Redemption Order is subject to acceptance by the Investment Company and must be preceded or accompanied by an irrevocable commitment to deliver the requisite number of Shares. At the time of settlement, an AP will initiate a delivery of the Shares plus or

delivered to the applicable Confidential Account, the applicable Fund will receive or pay a cash Balancing Amount to compensate for the difference between the value of the securities delivered and the NAV.

minus any cash Balancing Amounts, and less the expenses of liquidation.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Managed Portfolio 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 Managed Portfolio Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Managed Portfolio Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Specifically, the Exchange will implement real-time surveillances that monitor for the continued dissemination of the VIIV. The Exchange will also have surveillances designed to alert Exchange personnel where shares of a series of Managed Portfolio Shares are trading away from the VIIV. As noted in proposed Rule 14.11(k)(2)(C), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares. The Exchange believes that this is appropriate because, while the Exchange can envision circumstances under which such information would be useful to the Exchange, specifically in testing for a Fund's compliance with any

continued listing representations in the rule filing under Section 19(b) of the Act pursuant to which the Fund is listed on the Exchange, among others, the Exchange does not believe that there is value in the Exchange receiving such information every day, given its sensitivity. The Exchange does not believe that any of its real-time surveillances or reasons for halting a security, as further described below, would be enhanced by receiving such information and in addition does not believe that it makes sense to default to sharing the portfolio holdings unnecessarily on a daily basis.

The Exchange notes that the Exemptive Order restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.²⁵ As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or a substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁶ While future exemptive relief applicable to Managed Portfolio Shares may expand the

²⁵ As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could 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. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e-4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions. See Notice at 12, footnote 24.

²⁶ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

investable universe, the Exchange notes that proposed Rule 14.11(k)(2)(A) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series.

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

Trading Halts

As proposed above, the Exchange would halt trading as soon as practicable under the following circumstances: (a) upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares; and (b) where 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, and will not resume trading in such series until such time as the VIIV, the net asset value, or the holdings are available to all market participants, as required (collectively, "Publicly Available Information Halts").

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at 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. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. 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 proposed Rule 14.11(k)(3)(B), 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.

Trading Rules

The Exchange deems Managed Portfolio Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Managed Portfolio Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). 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.

Information Circular

Prior to the commencement of trading of a series of Managed Portfolio Shares, 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 of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are 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 the proposal is consistent with Section 6(b) of the Act²⁷ in general and Section 6(b)(5) of the Act²⁸ in particular in that it is designed to

²⁷ 15 U.S.C. 78f.

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 proposed Rule 14.11(k) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Managed Portfolio Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(k)(4) sets forth initial and continued listing criteria applicable to Managed Portfolio Shares. Proposed Rule 14.11(k)(4)(A)(i) provides that, for each series of Managed Portfolio Shares, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange. In addition, proposed Rule 14.11(k)(4)(A)(ii) provides that the Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share for the series will be calculated daily and that the NAV will be made available to all market participants at the same time.²⁹ Proposed Rule 14.11(k)(4)(A)(iii) provides that all Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under normal market conditions.

Proposed Rule 14.11(k)(4)(B) provides that each series of Managed Portfolio Shares will be listed and traded subject to application of the specified continued listing

²⁸ 15 U.S.C. 78f(b)(5).

²⁹ Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that if the Exchange becomes aware that the NAV with respect to a series of Managed Portfolio Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV is available to all market participants at the same time.

criteria, as described above. Proposed Rule 14.11(k)(4)(B)(i) provides that the VIIV for Managed Portfolio Shares 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 will be disseminated to all market participants at the same time. Proposed Rule 14.11(k)(4)(B)(ii) provides that the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days; (b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(k)(4)(B)(iii) 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 a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares 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) and such issue persists past the trading day in which it occurred; (d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any 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; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations, as defined in Rule 14.11(a), for the issue of Managed Portfolio Shares are not continuously met; or (g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. Proposed Rule 14.11(k)(4)(B)(iii)(a) provides that, upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the condition or conditions necessary for the resumption of trading have been met.³⁰

Proposed Rule 14.11(k)(4)(B)(iii)(b) provides that, if the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value with respect to a series of Managed Portfolio Shares is not

³⁰ As provided in the Application, such conditions would exist where either: (i) the intraday indicative values calculated by the pricing verification agent(s) 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. The Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable after receipt of notification of the existence of such conditions. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that these conditions no longer exist.

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, it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available to all market participants as required. Proposed Rule 14.11(k)(4)(B)(iv) provides that, upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing. Proposed Rule 14.11(k)(4)(B)(v) provides that voting rights shall be as set forth in the applicable Investment Company prospectus and/or Statement of Additional Information. The Exchange also notes that the Notice provides that an issuer will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Managed Portfolio Shares.³¹

Proposed 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 and/or changes to such Investment Company portfolio and/or Creation Basket. 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

³¹ See Notice at 15.

information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or Creation Basket. Proposed Rule 14.11(k)(2)(E) provides that, any person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.³²

³² The Exchange notes that the Order dismissed concerns raised by a third party related to potential violation of Section 10(b) of the Act, stating that "Contrary to the contentions advanced in the third-party submissions, the provision of the basket composition information to the AP Representative or use of that information by the AP Representative as provided for in the Application should not give rise to insider trading violations under section 10(b) of the Exchange Act." The notice goes on to say that an AP Representative "acting as an agent of another broker-dealer ("AP") will be given information concerning the identity and weightings of the basket of securities that the ETF would exchange for its shares (but not information concerning the issuers of those underlying securities). The AP Representative is provided this information by the ETF so that, pursuant to instructions received from an AP, the AP Representative may undertake the purchase or redemption of the ETF's Shares (in the form of creation units) and the purchase or sale of the basket of securities that are exchanged for creation units. The ETFs will provide this information to an AP Representative on a confidential basis, the AP Representative is subject to a duty of non-disclosure (which includes an obligation not to provide this information to an AP), and the AP

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Managed Portfolio Shares because they provide 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 proposed Rule 14.11(k)(2)(E)³³ will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund's portfolio composition, the Creation Basket, or changes thereto. The requirement

Representative may not use the information in any way except to facilitate the operation of the ETF by purchasing or selling the basket of securities and to exchange it with the ETF to complete an AP's orders to purchase or redeem the ETF's Shares. Furthermore, section 15(g) of the Exchange Act requires an AP Representative, as a registered broker, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information by the AP Representative or any person associated with the AP Representative." The Order goes on to say "For the foregoing reasons, it is found 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." See Order at 2, 3, and 4.

³³ As described above, proposed Rule 14.11(k)(2)(E) provides that any person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.

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, after consulting with various LMMs that trade ETFs on the Exchange, believes that market makers will be able to make efficient and liquid markets priced near the VIIV, as long as market makers have knowledge of a Fund’s means of achieving its investment objective, even without daily disclosure of a fund’s underlying portfolio.³⁴ The Exchange believes that market makers will employ risk-management techniques to make efficient markets in exchange traded products. This ability should permit market makers to make efficient markets in shares without knowledge of a fund’s underlying portfolio.

The Exchange understands that traders use statistical analysis to derive correlations between different sets of instruments to identify opportunities to buy or sell one set of instruments when it is mispriced relative to the others. For Managed Portfolio Shares, market makers utilizing statistical arbitrage use the knowledge of a fund’s means of achieving its investment objective, as described in the applicable fund registration

³⁴ The Exchange notes that the Commission reached the same conclusion in the Notice, specifically stating: “The Commission believes that the alternative arbitrage mechanism proposed by Applicants can also work in an efficient manner to maintain an ActiveShares ETF’s secondary market prices close to its NAV.” See the Notice at 19.

statement, to construct a hedging proxy for a fund to manage a market maker's quoting risk in connection with trading fund shares. Market makers will then conduct statistical arbitrage between their hedging proxy (for example, the Russell 1000 Index) and shares of a fund, buying and selling one against the other over the course of the trading day. Eventually, at the end of each day, they will evaluate how their proxy performed in comparison to the price of a fund's shares, and use that analysis as well as knowledge of risk metrics, such as volatility and turnover, to enhance their proxy calculation to make it a more efficient hedge.

Market makers have indicated to the Exchange that there will be sufficient data to run a statistical analysis which will lead to spreads being tightened substantially around the VIIV. This is similar to certain other existing exchange traded products (for example, ETFs that invest in foreign securities that do not trade during U. S. trading hours), in which spreads may be generally wider in the early days of trading and then narrow as market makers gain more confidence in their real-time hedges.

The LMMs also indicated that, as with some other new exchange-traded products, spreads would tend to narrow as market makers gain more confidence in the accuracy of their hedges and their ability to adjust these hedges in real-time relative to the published VIIV and gain an understanding of the applicable market risk metrics such as volatility and turnover, and as natural buyers and sellers enter the market. Other relevant factors cited by LMMs were that a fund's investment objectives are clearly disclosed in the applicable prospectus, the existence of quarterly portfolio disclosure and the ability to create shares in creation unit size or redeem in redemption unit size through an AP.

The real-time dissemination of a Fund's VIIV together with the right of APs to

create and redeem each day at the NAV will be sufficient for market participants to value and trade Shares in a manner that will not lead to significant deviations between the shares' Bid/Ask Price and NAV.

The pricing efficiency with respect to trading a series of Managed Portfolio Shares will generally rest on the ability of market participants to arbitrage between the Shares and a fund's portfolio, in addition to the ability of market participants to assess a fund's underlying value accurately enough throughout the trading day in order to hedge positions in shares effectively. Professional traders can buy Shares that they perceive to be trading at a price less than that which will be available at a subsequent time, and sell Shares they perceive to be trading at a price higher than that which will be available at a subsequent time. It is expected that, as part of their normal day-to-day trading activity, market makers assigned to Shares by the Exchange, off-exchange market makers, firms that specialize in electronic trading, hedge funds and other professionals specializing in short-term, non-fundamental trading strategies will assume the risk of being "long" or "short" shares through such trading and will hedge such risk wholly or partly by simultaneously taking positions in correlated assets³⁵ or by netting the exposure against other, offsetting trading positions – much as such firms do with existing ETFs and other equities. Disclosure of a fund's investment objective and principal investment strategies

³⁵ Price correlation trading is used throughout the financial industry. It is used to discover both trading opportunities to be exploited, such as currency pairs and statistical arbitrage, as well as for risk mitigation such as dispersion trading and beta hedging. These correlations are a function of differentials, over time, between one or multiple securities pricing. Once the nature of these price deviations have been quantified, a universe of securities is searched in an effort to, in the case of a hedging strategy, minimize the differential. Once a suitable hedging basket has been identified, a trader can minimize portfolio risk by executing the hedging basket. The trader then can monitor the performance of this hedge throughout the trade period, making corrections where warranted.

in its prospectus and SAI, along with the dissemination of the VIIV in one second intervals, should permit professional investors to engage easily in this type of hedging activity.³⁶

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 a 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 a Fund's actual portfolio holdings, (2) the securities in which a Fund plans to invest are generally highly liquid and actively traded 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

³⁶ With respect to trading in the Shares, market participants would manage risk in a variety of ways. It is expected that market participants will be able to determine how to trade Shares at levels approximating the VIIV without taking undue risk by gaining experience with how various market factors (e.g., general market movements, sensitivity of the VIIV to intraday movements in interest rates or commodity prices, etc.) affect VIIV, and by finding hedges for their long or short positions in Shares using instruments correlated with such factors. Market participants will likely initially determine the VIIV's correlation to a major large capitalization equity benchmark with active derivative contracts, such as the Russell 1000 Index, and the degree of sensitivity of the VIIV to changes in that benchmark. For example, using hypothetical numbers for illustrative purposes, market participants should be able to determine quickly that price movements in the Russell 1000 Index predict movements in a Fund's VIIV 95% of the time (an acceptably high correlation) but that the VIIV generally moves approximately half as much as the Russell 1000 Index with each price movement. This information is sufficient for market participants to construct a reasonable hedge – buy or sell an amount of futures, swaps or ETFs that track the Russell 1000 equal to half the opposite exposure taken with respect to Shares. Market participants will also continuously compare the intraday performance of their hedge to a Fund's VIIV. If the intraday performance of the hedge is correlated with the VIIV to the expected degree, market participants will feel comfortable they are appropriately hedged and can rely on the VIIV as appropriately indicative of a Fund's performance.

close of trading is indeed predictive of the actual NAV.³⁷

In a typical index-based ETF, it is standard for APs to know what securities must be delivered in a creation or will be received in a redemption. For Managed Portfolio Shares, however, APs do not need to know the securities comprising the portfolio of a Fund since creations and redemptions are handled through the Confidential Account mechanism. In-kind creations and redemptions through a Confidential Account are expected to preserve the integrity of the active investment strategy and reduce the potential for “free riding” or “front-running,” while still providing investors with the advantages of the ETF structure.

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 from the Investment Company that issues each series of Managed Portfolio Shares that the NAV per share of a 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 a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov. In addition, a large amount of information will be publicly available regarding the Funds and the Shares, thereby promoting market transparency. Quotation and last sale information for

³⁷ The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on statements in the Exemptive Order, representations by Precidian, and review by the Exchange.

the Shares will be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated in one second intervals throughout Regular Trading Hours by the Reporting Authority and/or one or more major market data vendors. The website for each Fund will include a form of the 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 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 of a Fund may be inadvisable. Specifically, the Exchange would halt trading as soon as practicable under the following circumstances: (a) upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares; and (b) where 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, and will not resume trading in such series until such time as the VIIV, the net asset value, or the holdings are available to all market participants, as required.

The Exchange is proposing to rely on notice from the Investment Company or its agent of certain circumstances provided under the Investment Company's exemptive order or no-action relief to halt trading in a series of Managed Portfolio Shares (an "Exemptive Halt") and four scenarios under which the Exchange would halt trading upon becoming aware of certain circumstances. Specifically, the Exchange is proposing to rely on notice from the Investment Company or its agent to halt for an Exemptive Halt because the Exchange is not in a position to know or become aware of such circumstances without the Investment Company or its agent. As it relates to the Exemptive Halts provided in the Application and described above, the Exchange does not expect to act as a pricing verification agent and, as such, would not have access to such information without notice from the Investment Company or its agent and similarly will not have direct access to whether the pricing verification agent has readily available market quotations necessary to calculate the VIIV. Even if the Investment Company was providing the Exchange with the portfolio holdings on a daily basis,³⁸ the Exchange would not be in a position to determine whether market quotations are readily available to the Investment Company or its agent and whether such quotations are unavailable in

³⁸ As described above under "Surveillance," proposed Rule 14.11(k)(2)(C), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares, but it will not necessarily be providing such holdings on a daily basis.

holdings representing 10% or more of a Fund's portfolio. Further, the Exchange believes that it is appropriate for the Exchange to halt under such circumstances because prior to listing on the Exchange, the Commission would have issued an order determining that it is appropriate to halt in those scenarios.³⁹

For each of the Publicly Available Information Halts, the scenario that triggers a halt is based on information that is available to the Exchange, either because the information is publicly available, the information will flow through the Exchange prior to being publicly disseminated, or both, and, thus, the Exchange is proposing that these halts should be subject to the Exchange becoming aware of such circumstances. The Exchange notes, however, that this is in addition to an Investment Company's obligation of disclosure of noncompliance under Rule 14.11(a), which requires that a "Company with securities listed on the Exchange must provide the Exchange with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Rule 14.11." With this in mind, the Exchange becoming aware of any issue that would require a Publicly Available Information Halt could come through its own surveillances or through disclosure by an Investment Company. The Exchange further believes that these proposed reasons to halt trading in shares of a series of Managed Portfolio Shares are consistent with the Act because: (i) the Commission has already determined that the requirement that the VIIV be disseminated every second is appropriate;⁴⁰ (ii) the other Publicly Available Information Halts are generally consistent with and designed to address the same concerns about asymmetry of information that

³⁹ The Exemptive Halts are included in the Application and Notice on which the Order is based. See Application at 23 and 24, footnote 57, respectively, and Notice at 12, Footnote 25.

⁴⁰ See Application at 4 and Notice at 11.

Rule 14.11(i)(4)(iv) related to trading halts in Managed Fund Shares⁴¹ is intended to address, specifically that the availability of such information is intended to reduce the potential for manipulation and help ensure a fair and orderly market in Managed Portfolio Shares;⁴² and (iii) the quarterly disclosure of portfolio holdings is a fundamental component of Managed Portfolio Shares that allows market participants to better understand the strategy of the funds and to monitor how closely trading in the funds is tracking the value of the underlying portfolio and when such information is not being

⁴¹ Rule 14.11(i)(4)(iv) provides that “If the Intraday Indicative Value of a series of Managed Fund Shares is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the Intraday Indicative Value occurs. If the interruption to the dissemination of the Intraday Indicative Value persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the net asset value or the Disclosed Portfolio with respect to a series of Managed Fund Shares is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the net asset value or the Disclosed Portfolio is available to all market participants.” These are generally consistent with the proposed Publicly Available Information Halts, specifically as it relates to whether the NAV or Disclosed Portfolio is not being made available to all market participants at the same time.

⁴² See, e.g., Securities Exchange Act Release No. 80169 (March 7, 2017), 82 FR 13536 (March 13, 2017); Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 66993, 66997 (November 17, 2006) (SR-AMEX-2006-78) (approving generic listing standards for Portfolio Depositary Receipts and Index Fund Shares based on international or global indexes, and stating that “the proposed listing standards are designed to preclude ETFs from becoming surrogates for trading in unregistered securities” and that “the requirement that each component security underlying an ETF be listed on an exchange and subject to last-sale reporting should contribute to the transparency of the market for ETFs” and that “by requiring pricing information for both the relevant underlying index and the ETF to be readily available and disseminated, the proposal is designed to ensure a fair and orderly market for ETFs”); 53142 (January 19, 2006), 71 FR 4180, 4186 (January 25, 2006) (SR-NASD-2006-001) (approving generic listing standards for Index-Linked Securities and stating that “[t]he Commission believes that by requiring pricing information for both the relevant underlying index or indexes and the Index Security to be readily available and disseminated, the proposed listing standards should help ensure a fair and orderly market for Index Securities”).

disclosed as required, trading in the shares is inadvisable and it is necessary and appropriate to halt trading.

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 additional type of 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. The Exemptive Order also restricts the investable universe for a series of Managed Portfolio Shares to include only certain instruments that trade on a U.S. exchange, contemporaneously with the Shares, and in cash and cash equivalents.⁴³ As such, any equity instruments or futures held by a Fund operating under the Exemptive Order or substantively identical exemptive order would trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a

⁴³ As described in the Notice, each series would invest only in ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts and futures. All of these instruments will trade on a U.S. exchange contemporaneously with the Shares. The reference assets of the exchange-traded futures in which a Fund may invest would be assets that the Fund could 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. A Fund may also invest in cash and cash equivalents. No Fund would buy securities that are illiquid investments (as defined in rule 22e-4(a)(8) under the 1940 Act) at the time of purchase, borrow for investment purposes or hold short positions.

comprehensive surveillance sharing agreement.⁴⁴ While future exemptive relief applicable to Managed Portfolio Shares may expand the investable universe, the Exchange notes that proposed Rule 14.11(k)(2)(A) would require the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares and such proposal would describe the investable universe for any such series of Managed Portfolio Shares along with the Exchange's surveillance procedures applicable to such series. 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 will facilitate the listing and trading of a new type of actively-managed exchange-traded products 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.

⁴⁴ The Exchange notes that cash equivalents may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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 e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-047 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-2019-047. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-047 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴⁵

Secretary

⁴⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined. Proposed deletions are in [brackets].

Rule 14.11 Other Securities

(a) This Rule contains the requirements for listing other securities on the Exchange, including Exchange Traded Funds, Portfolio Depository Receipts, Index Fund Shares, and various other types of securities, as set forth below (collectively, “Other Securities”). A Company with securities listed under this Rule 14.11 must provide the Exchange with prompt notification after the Company becomes aware of any noncompliance by the Company with the requirements of Rule 14.11. The Exchange may submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of a series of Other Securities that does not otherwise meet the respective standards set forth in this Rule 14.11. The Exchange may also be required to submit a rule filing pursuant to Section 19(b) of the Act to permit the listing of certain types of Other Securities, as provided in this Rule 14.11. In either case, any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, [and]intraday indicative values, and Verified Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, “Continued Listing Representations”) shall constitute continued listing requirements for the securities listed on the Exchange.

(b)-(j) (No changes.)

(k) Managed Portfolio Shares

(1) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Managed Portfolio Shares that meet the criteria of this Rule.

(2) Applicability. This Rule is applicable only to Managed Portfolio Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Managed Portfolio Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(A) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before the listing and trading of a series of Managed Portfolio Shares.

(B) Transactions in Managed Portfolio Shares will occur only during Regular Trading Hours.

(C) Surveillance Procedures. The Exchange will implement and maintain written surveillance procedures for Managed Portfolio Shares. As part of these surveillance procedures, the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily portfolio holdings of each series of Managed Portfolio Shares.

(D) 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 and/or changes to such Investment Company portfolio and/or Creation Basket. 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, Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or Creation Basket.

(E) Any person or entity, including an AP Representative, custodian, pricing verification agent, reporting authority, distributor, or administrator, who has access to information regarding the Investment Company's portfolio composition, the Creation Basket, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio or 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.

(3) Definitions. The following terms as used in the Rules shall, unless the context otherwise requires, have the meanings herein specified:

(A) Managed Portfolio Share. 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, 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 SEC) through a Confidential Account; (c) when aggregated into a Redemption Unit, 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 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 calendar quarter.

(B) Verified Intraday Indicative Value. The term "Verified Intraday Indicative Value" is 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 by the Reporting Authority.

(C) AP Representative. The term "AP Representative" means an unaffiliated broker-dealer 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 all consideration to or from the Investment Company in a creation or redemption. An AP Representative will be restricted from disclosing the Creation Basket.

(D) Confidential Account. The term "Confidential Account" means 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.

(E) Creation Basket. The term "Creation Basket" means on any given business day the names and quantities of the specified instruments that are required for an AP Representative 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 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.

(F) Creation Unit. The term "Creation Unit" means 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.

(G) Redemption Unit. The term "Redemption Unit" means 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.

(H) Reporting Authority. The term "Reporting Authority" in respect of a particular series of Managed Portfolio Shares means 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.

(I) Normal Market Conditions. The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

(4) Initial and Continued Listing. Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following criteria:

(A) Initial Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria:

(i) For each series, the Exchange will establish a minimum number of Managed Portfolio Shares required to be outstanding at the time of commencement of trading on the Exchange.

(ii) The Exchange will obtain a representation from the Investment Company that issues each series of Managed Portfolio Shares that the net asset value per share for the series will be calculated daily and that the net asset value will be made available to all market participants at the same time.

(iii) All Managed Portfolio Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(B) Continued Listing. Each series of Managed Portfolio Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria:

(i) Verified Intraday Indicative Value. The Verified Intraday Indicative Value for Managed Portfolio Shares will be widely disseminated by the Reporting Authority and/or by one or more major market data vendors in one second intervals during Regular Trading Hours, and will be disseminated to all market participants at the same time.

(ii) Suspension of trading or removal. The Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio Shares under any of the following circumstances:

(a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares for 30 or more consecutive trading days;

(b) if the Exchange has halted trading in a series of Managed Portfolio Shares because the Verified Intraday Indicative Value is interrupted pursuant to Rule 14.11(k)(4)(B)(iii) 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 a series of Managed Portfolio Shares because the net asset value with respect to such series of Managed Portfolio Shares is not disseminated to all market participants at the same time, the holdings of such series of Managed Portfolio Shares 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) and such issue persists past the trading day in which it occurred;

(d) if the Investment Company issuing the Managed Portfolio Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any 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;

(e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained;

(f) if any of the applicable Continued Listing Representations for the issue of Managed Portfolio Shares are not continuously met; or

(g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

(iii) Trading Halt.

(a) Upon notification to the Exchange by the Investment Company or its agent of the existence of any condition or set of conditions specified in any currently applicable exemptive order or no-action relief granted by the Commission or Commission staff that would require the Investment Company's investment adviser to request that the Exchange halt trading in the Managed Portfolio Shares, the Exchange shall halt trading in the Managed Portfolio Shares as soon as practicable. Such halt in trading shall continue until the Investment Company or its agent notifies the Exchange that the condition or conditions necessary for the resumption of trading have been met.

(b) If the Exchange becomes aware that: (i) the Verified Intraday Indicative Value of a series of Managed Portfolio Shares is not being calculated or disseminated in one second intervals, as required; (ii) the net asset value 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, it will halt trading in such series until such time as the Verified Intraday Indicative Value, the net asset value, or the holdings are available to all market participants, as required.

(iv) Termination. Upon termination of an Investment Company, the Exchange requires that Managed Portfolio Shares issued in connection with such entity be removed from Exchange listing.

(v) Voting. Voting rights shall be as set forth in the applicable Investment Company prospectus and/or statement of additional information.

(5) Limitation of Exchange Liability. Neither the Exchange, the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Managed Portfolio Shares; the Verified Intraday Indicative Value; the amount of any dividend equivalent payment or cash distribution to holders of Managed Portfolio Shares; net asset value; or other information relating to the purchase, redemption, or trading of Managed Portfolio Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority when the Exchange is acting in the capacity of a Reporting Authority, or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, when the Exchange is acting in the capacity of a Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

(6) Disclosures. The provisions of this subparagraph apply only to series of Managed Portfolio Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its Members regarding application of this subparagraph to a particular series of Managed Portfolio Shares by means of an information circular prior to commencement of trading in such series.

The Exchange requires that members provide to all purchasers of a series of Managed Portfolio Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Managed Portfolio Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Managed Portfolio Shares as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of (the series of Managed Portfolio Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Managed Portfolio Shares)."

A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Managed Portfolio Shares for such omnibus account will be deemed to constitute

agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule.

Upon request of a customer, a member shall also provide a prospectus for the particular series of Managed Portfolio Shares.
