

Required fields are shown with yellow backgrounds and asterisks.

Filing by Cboe EDGX Exchange, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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| Initial * <input checked="" type="checkbox"/> | Amendment * <input type="checkbox"/> | Withdrawal <input type="checkbox"/> | Section 19(b)(2) * <input type="checkbox"/> | Section 19(b)(3)(A) * <input checked="" type="checkbox"/> | Section 19(b)(3)(B) * <input type="checkbox"/> |
| | | | Rule | | |
| Pilot <input type="checkbox"/> | Extension of Time Period for Commission Action * <input type="checkbox"/> | Date Expires * <input type="text"/> | <input type="checkbox"/> 19b-4(f)(1) | <input type="checkbox"/> 19b-4(f)(4) | |
| | | | <input type="checkbox"/> 19b-4(f)(2) | <input type="checkbox"/> 19b-4(f)(5) | |
| | | | <input type="checkbox"/> 19b-4(f)(3) | <input checked="" type="checkbox"/> 19b-4(f)(6) | |

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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 | Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 |
| Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
| Section 3C(b)(2) * <input type="checkbox"/> | |

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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description

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

The Exchange proposes to adopt Rule 14.13 to permit the trading, pursuant to unlisted trading privileges, of Tracking Fund Shares.

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 * Sarah Last Name * Tadtman

Title * Counsel

E-mail * stadtman@cboe.com

Telephone * (913) 815-7203 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 06/03/2020 VP, Associate General Counsel

By Kyle Murray

(Name *)

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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 *

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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 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

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

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.

Item 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 EDGX Exchange, Inc. (the “Exchange” or “EDGX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Rule 14.13 to permit the trading, pursuant to unlisted trading privileges, of Tracking Fund Shares. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Tracking Fund Shares and proposed Rule 14.13, where applicable. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable

(c) Not applicable.

Item 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 22, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to adopt Rule 14.13 to permit the trading, pursuant to unlisted trading privileges (“UTP”), of Tracking Fund Shares,³ which substantially conforms to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(m).⁴ Additionally, the

³ The term “Tracking Fund Share” means a security that: (i) 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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See proposed Rule 14.13(c)(1).

⁴ See Securities and Exchange Act Release No. 88887 (May 15, 2020) 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (the “BZX Approval Order”). The BZX proposal resulting in the BZX Approval Order involved several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and a subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Application,” “Notice,” and “Order,” respectively, and, collectively, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (the 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.” The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the “Proxy Applications”) and notices thereof

Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Tracking Fund Shares and proposed Rule 14.13, where applicable.

The Exchange does not currently list any securities as a primary listing market.⁵ Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3⁶ (“Rule 10A-3”) and 10C-1⁷ (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11 through 14.12, and proposed Rule 14.13 that permit the listing of certain Equity Securities⁸ will not

(collectively, with the Notice, the “Proxy Notices”) for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Tracking Fund Shares under BZX Rule 14.11(m).

⁵ The Exchange notes that it does not currently list any securities nor does it intend to list any securities in the foreseeable future and, accordingly, plans to submit in the near future a proposal to amend its applicable Rules set forth in Chapter XIV in order to reflect this fact.

⁶ Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

⁷ Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the issuer’s board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

⁸ As provided in Rule 14.1(a), the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited

be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.13 as set forth below.

Proposed Listing Rules

Proposed Rule 14.13 is substantially similar to BZX Rule 14.11(m) with the exception that BZX Rules provide for the delisting of securities,⁹ while the Exchange only trades securities pursuant to UTP.¹⁰ Accordingly, the proposed Rule¹¹ provides that the Exchange will consider the termination of UTP for a series of Tracking Fund Shares under certain circumstances,¹² while no such provision is provided in BZX Rule 14.11(m). Nonetheless, the Exchange believes the proposal will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition as it is substantially similar to Exchange Rules applicable to other

partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, Managed Portfolio Shares, and Exchange-Traded Funds. Further, the Exchange now proposes to include the term “Tracking Fund Shares” to the definition of Equity Security.

⁹ See BZX Rule 14.11(m)(4)(B)(iii).

¹⁰ See proposed Exchange Rule 14.13(d)(2)(C).

¹¹ See proposed Exchange Rule 14.13(d)(2)(C).

¹² See proposed Exchange Rules 14.13(d)(2)(C)(i) through 14.13(d)(2)(C)(vi).

product types which allow for the termination of UTP in those products.¹³ As such, the Exchange believes the proposal raises no novel issues.

Policy Discussion

The purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of Exchange-Traded Funds (“ETFs”)¹⁴ while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to certain Investment Company Units (as defined in Rule 14.2), Tracking Fund Shares differ from Investment Company Units in one key way.¹⁵ A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed to *closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Investment Company Units.¹⁶

¹³ See Exchange Rules 14.3(g)(2), 14.11(d)(2)(B), and 14.12(d)(2)(A).

¹⁴ For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.8, Investment Company Units as defined in Rule 14.2, and Exchange-Traded Fund Shares as defined in Rule 14.12, along with the equivalent products defined in the rules of other national securities exchanges.

¹⁵ The Exchange notes that there is one additional substantive difference between proposed Rule 14.13 and Rule 14.2: proposed Rule 14.13 would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.2.

¹⁶ Proposed Rule 14.13(d)(2)(C) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, “Market Makers”) need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Tracking Basket and the Fund Portfolio,¹⁷ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market

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.

¹⁷ As provided in the Proxy Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund’s crossing a threshold, the adviser will promptly call a meeting of the fund’s board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

transactions and, after accumulating enough shares to comprise a creation unit,¹⁸ redeem them in exchange for a redemption basket reflecting the NAV per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market

¹⁸ Tracking Fund Shares will be purchased or redeemed only in large aggregations, or "creation units," and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.¹⁹ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask

¹⁹ See Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. See Id., at 64145.

price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.13(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund 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 14.13(d)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such

person or entity that is registered as a broker-dealer or affiliated with a broker-dealer 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 Fund Portfolio or Tracking Basket 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.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund 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 Tracking Fund 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 Tracking Fund Shares traded 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. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.13(b)(4), the Investment Company’s investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series

of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Rule 14.13(d)(2)(D) provides that (i) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (ii) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

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. The Exchange also notes that the Proxy Applications provide 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 Tracking Fund Shares.

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.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities.²⁰ As provided in proposed Rule 14.13(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

²⁰ With respect to trading in Tracking Fund Shares, all of the EDGX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

(b) Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²¹ in general and Section 6(b)(5) of the Act²² 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 14.13 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.13(d)(1) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (i) for each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio; and (iii) all Tracking Fund Shares will have a stated investment objective which shall be adhered to under

²¹ 15 U.S.C. 78f.

²² 15 U.S.C. 78f(b)(5).

Normal Market Conditions.²³

Proposed Rule 14.13(d)(2) provides that each series of Tracking Fund Shares will be listed and traded (including trading pursuant to UTP) on the Exchange subject to application of the following continued listing criteria: (i) the Tracking Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.13(d)(2)(C) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of Tracking Fund Shares under any of the following circumstances: (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (ii) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (iii) if the Investment Company issuing the Tracking Fund 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 exemptive order or no-action relief granted by the Commission to the Investment

²³ See proposed Rule 14.13(c)(4).

Company with respect to the series of Tracking Fund Shares; (iv) if any of the requirements set forth in this rule are not continuously maintained; (v) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (vi) 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 14.13(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule 14.13(d)(2)(D)(ii) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.13(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices

related to the listing and trading of Tracking Fund 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 14.13(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer 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 Fund Portfolio or Tracking Basket 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 believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about Tracking Fund Shares (the Tracking Basket) 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 firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Tracking Basket.

As noted above, the purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to certain Investment Company Units (as defined in Rule 14.2), Tracking Fund Shares differ from Investment Company Units in one key way.²⁴ A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.²⁵

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the holdings of a series of Tracking Fund Shares.

²⁴ See supra note 9.

²⁵ See supra note 10.

Given the correlation between the Tracking Basket and the Fund Portfolio,²⁶ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,²⁷ redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but

²⁶ See supra note 11.

²⁷ See supra note 12.

nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.²⁸ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each series of Tracking Fund Shares and its Fund Portfolio will be required to be made publicly available at all times. Each series of Tracking Fund Shares will be required to disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum be required to publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies

²⁸ See supra note 13.

registered under the 1940 Act. The website for each series of Tracking Fund Shares will be required to include additional quantitative information updated on a daily basis, including, on a per share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website for each series of Tracking Fund Shares will also be required disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each series of Tracking Fund Shares as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund 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 Tracking Fund 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 Tracking Fund Shares traded 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. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.13(b)(4), 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 Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange and/or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

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. The Exchange also notes that the Proxy Applications provide 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 Tracking Fund Shares.

Information regarding market price and trading volume of the shares for each series of Tracking Fund Shares will be required to 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 of each series of Tracking Fund Shares will be required to be published daily in the financial section of newspapers. Quotation and last sale information for the shares for each series of Tracking Fund Shares will be required to be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in such shares to be subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.13(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

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.

Item 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. Rather, the Exchange notes that the proposed rule change will facilitate the trading pursuant to UTP of a new type of actively-managed exchange-traded product, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act²⁹ and Rule 19b-4(f)(6)³⁰ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that the proposed rule would not significantly affect the protection of investors or the public interest and would not impose a burden on competition because it would allow for Tracking Fund Shares to trade on the Exchange pursuant to UTP. Specifically, by allowing Tracking Fund Shares to trade on the Exchange, market participants would be afforded an additional trading venue option for Tracking Fund Shares. Further, trading of Tracking Fund Shares on the Exchange would

²⁹ 15 U.S.C. 78s(b)(3)(A).

³⁰ 17 CFR 240.19b-4(f)(6).

foster competition among trading venues. Additionally, proposed Rule 14.13 is substantially similar to BZX Rule 14.11(m) with the exception that BZX Rules provide for the delisting of securities,³¹ while the Exchange only trades securities pursuant to UTP.³² Accordingly, the proposed Rule³³ provides that the Exchange will consider the termination of UTP for a series of Tracking Fund Shares under certain circumstances,³⁴ while no such provision is provided in BZX Rule 14.11(m). Nonetheless, the Exchange believes the proposal will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition as it is substantially similar to Exchange Rules applicable to other product types which allow for the termination of UTP in those products.³⁵ As such, the Exchange believes the proposal raises no novel issues.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the operative delay. Waiver of the operative delay is consistent with the protection of investors and the public interest as it would allow for the immediate trading, pursuant to UTP, of Tracking Fund Shares on the Exchange, which have been

³¹ See BZX Rule 14.11(m)(4)(B)(iii).

³² See proposed Exchange Rule 14.13(d)(2)(C).

³³ See proposed Exchange Rule 14.13(d)(2)(C).

³⁴ See proposed Exchange Rules 14.13(d)(2)(C)(i) through 14.13(d)(2)(C)(vi).

³⁵ See Exchange Rules 14.3(g)(2), 14.11(d)(2)(B), and 14.12(d)(2)(A).

approved for listing and trading on BZX, and therefore would provide investors with an additional trading venue option.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed adoption of Rule 14.13 is based on BZX Rule 14.11(m), which sets forth the listing and trading requirements of Tracking Fund Shares on BZX.³⁶ The provisions of proposed rule 14.13 that permit the listing of Tracking Fund Shares will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission.³⁷ Therefore, while proposed Rule 14.13 is substantially similar to BZX Rule 14.11(m), the Exchange will not list Tracking Fund Shares in connection with the proposed adoption of Rule 14.13.

Proposed Rule 14.13 is substantially similar to BZX Rule 14.11(m) with the exception that BZX Rules provide for the delisting of securities³⁸ while the Exchange

³⁶ See supra note 4.

³⁷ See Exchange Rule 14.1(a).

³⁸ See BZX Rule 14.11(m)(4)(B)(iii).

only trades securities pursuant to UTP.³⁹ Accordingly, the proposed Rule⁴⁰ provides that the Exchange will consider the termination of UTP for a series of Tracking Fund Shares under certain circumstances,⁴¹ while no such provision is provided in BZX Rule 14.11(m). Nonetheless, the Exchange believes the proposal will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition as it is substantially similar to Exchange Rules applicable to other product types which allow for the termination of UTP in those products.⁴² As such, the Exchange believes the proposal raises no novel issues.

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 5. Proposed rule text.

³⁹ See proposed Exchange Rule 14.13(d)(2)(C).

⁴⁰ See proposed Exchange Rule 14.13(d)(2)(C).

⁴¹ See proposed Exchange Rules 14.13(d)(2)(C)(i) through 14.13(d)(2)(C)(vi).

⁴² See Exchange Rules 14.3(g)(2), 14.11(d)(2)(B), and 14.12(d)(2)(A).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeEDGX-2020-026]

[Insert date]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Rule 14.13 to Permit the Trading, Pursuant to Unlisted Trading Privileges, of Tracking Fund Shares

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 EDGX Exchange, Inc. (the “Exchange” or “EDGX”) 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes a rule change to adopt Rule 14.13 to permit the trading, pursuant to unlisted trading privileges, of Tracking Fund Shares. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Tracking

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

Fund Shares and proposed Rule 14.13, where applicable. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/edgx/), 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

The Exchange proposes to adopt Rule 14.13 to permit the trading, pursuant to unlisted trading privileges ("UTP"), of Tracking Fund Shares,⁵ which substantially conforms to Cboe

⁵ The term "Tracking Fund Share" means a security that: (i) 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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See proposed Rule 14.13(c)(1).

BZX Exchange, Inc. (“BZX”) Rule 14.11(m).⁶ Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Tracking Fund Shares and proposed Rule 14.13, where applicable.

The Exchange does not currently list any securities as a primary listing market.⁷

Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on

⁶ See Securities and Exchange Act Release No. 88887 (May 15, 2020) 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (the “BZX Approval Order”). The BZX proposal resulting in the BZX Approval Order involved several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 and a subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Application,” “Notice,” and “Order,” respectively, and, collectively, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 (November 14, 2019), 84 FR 64140 (November 20, 2019) (the Notice) and 33712 (the 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.” The Exchange notes that it also referred to the application for exemptive relief orders (collectively, with the Application, the “Proxy Applications”) and notices thereof (collectively, with the Notice, the “Proxy Notices”) for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Tracking Fund Shares under BZX Rule 14.11(m).

⁷ The Exchange notes that it does not currently list any securities nor does it intend to list any securities in the foreseeable future and, accordingly, plans to submit in the near future a proposal to amend its applicable Rules set forth in Chapter XIV

the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3⁸ (“Rule 10A-3”) and 10C-1⁹ (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11 through 14.12, and proposed Rule 14.13 that permit the listing of certain Equity Securities¹⁰ will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.13 as set forth below.

Proposed Listing Rules

in order to reflect this fact.

⁸ Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

⁹ Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the issuer’s board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

¹⁰ As provided in Rule 14.1(a), the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, Managed Portfolio Shares, and Exchange-Traded Funds. Further, the Exchange now proposes to include the term “Tracking Fund Shares” to the definition of Equity Security.

Proposed Rule 14.13 is substantially similar to BZX Rule 14.11(m) with the exception that BZX Rules provide for the delisting of securities,¹¹ while the Exchange only trades securities pursuant to UTP.¹² Accordingly, the proposed Rule¹³ provides that the Exchange will consider the termination of UTP for a series of Tracking Fund Shares under certain circumstances,¹⁴ while no such provision is provided in BZX Rule 14.11(m). Nonetheless, the Exchange believes the proposal will not significantly affect the protection of investors or the public interest and will not impose any significant burden on competition as it is substantially similar to Exchange Rules applicable to other product types which allow for the termination of UTP in those products.¹⁵ As such, the Exchange believes the proposal raises no novel issues.

Policy Discussion

The purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of Exchange-Traded Funds (“ETFs”)¹⁶ while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to certain Investment Company Units

¹¹ See BZX Rule 14.11(m)(4)(B)(iii).

¹² See proposed Exchange Rule 14.13(d)(2)(C).

¹³ See proposed Exchange Rule 14.13(d)(2)(C).

¹⁴ See proposed Exchange Rules 14.13(d)(2)(C)(i) through 14.13(d)(2)(C)(vi).

¹⁵ See Exchange Rules 14.3(g)(2), 14.11(d)(2)(B), and 14.12(d)(2)(A).

¹⁶ For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.8, Investment Company Units as defined in Rule 14.2, and Exchange-Traded Fund Shares as defined in Rule 14.12, along with the equivalent products defined in the rules of other national securities exchanges.

(as defined in Rule 14.2), Tracking Fund Shares differ from Investment Company Units in one key way.¹⁷ A series of Tracking Fund Shares will disclose the Tracking Basket on a daily basis which, as described above, is designed to *closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Investment Company Units.¹⁸

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, “Market Makers”) need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the Fund Portfolio.

Given the correlation between the Tracking Basket and the Fund Portfolio,¹⁹ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify

¹⁷ The Exchange notes that there is one additional substantive difference between proposed Rule 14.13 and Rule 14.2: proposed Rule 14.13 would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Tracking Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.2.

¹⁸ Proposed Rule 14.13(d)(2)(C) will, however, require each series of Tracking Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).

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.

¹⁹ As provided in the Proxy Notices, funds and their respective advisers will take

arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,²⁰ redeem them in exchange for a redemption basket reflecting the NAV per share of the Fund Portfolio. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in

remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Proxy Applications and Proxy Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

²⁰ Tracking Fund Shares will be purchased or redeemed only in large aggregations, or "creation units," and the Tracking Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.²¹ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

The Exchange notes that a significant amount of information about each fund and its Fund Portfolio will be publicly available at all times. Each series will disclose the

²¹ See Notice at 64144. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs. See Id., at 64145.

Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per share basis for each fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. The website and information will be publicly available at no charge.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.13(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund 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 14.13(d)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer 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 Fund Portfolio or Tracking Basket 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.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund 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 Tracking Fund 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 Tracking Fund Shares traded 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. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.13(b)(4), the Investment Company's investment adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each series of Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

Trading Halts

As described above, proposed Rule 14.13(d)(2)(D) provides that (i) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund

Portfolio; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; and (ii) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

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. The Exchange also notes that the Proxy Applications provide 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 Tracking Fund Shares.

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.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the shares subject to the Exchange’s existing rules governing the trading of equity securities.²² As provided in proposed Rule 14.13(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ 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 14.13 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and

²² With respect to trading in Tracking Fund Shares, all of the EDGX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

²³ 15 U.S.C. 78f.

²⁴ 15 U.S.C. 78f(b)(5).

trading of Tracking Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.13(d)(1) provides the initial listing criteria for a series of Tracking Fund Shares, which include the following: (i) for each series, the Exchange will establish a minimum number of Tracking Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the NAV per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the NAV, the Tracking Basket, and the Fund Portfolio; and (iii) all Tracking Fund Shares will have a stated investment objective which shall be adhered to under Normal Market Conditions.²⁵

Proposed Rule 14.13(d)(2) provides that each series of Tracking Fund Shares will be listed and traded (including trading pursuant to UTP) on the Exchange subject to application of the following continued listing criteria: (i) the Tracking Basket will be disseminated at least once daily and will be made available to all market participants at the same time; (ii) the Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; (iii) upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.13(d)(2)(C) provides that the Exchange will

²⁵ See proposed Rule 14.13(c)(4).

consider the suspension of trading in or removal from listing of or termination of UTP for a series of Tracking Fund Shares under any of the following circumstances: (i) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Tracking Fund Shares, there are fewer than 50 beneficial holders of the series of Tracking Fund Shares for 30 or more consecutive trading days; (ii) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time; (iii) if the Investment Company issuing the Tracking Fund 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 exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Tracking Fund Shares; (iv) if any of the requirements set forth in this rule are not continuously maintained; (v) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or (vi) 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 14.13(d)(2)(D)(i) provides that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Proposed Rule 14.13(d)(2)(D)(ii) if the Exchange

becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information, the Exchange believes that proposed Rules 14.13(b)(5) and (6) provide sufficient safeguards to prevent such leakage and misuse of information. The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund 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 14.13(b)(6) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally. Additionally, the requirement that any such

person or entity that is registered as a broker-dealer or affiliated with a broker-dealer 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 Fund Portfolio or Tracking Basket 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 believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Tracking Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about Tracking Fund Shares (the Tracking Basket) 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 firewalls and information protection will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Tracking Basket.

As noted above, the purpose of the structure of Tracking Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Tracking Fund Shares will be actively managed and, to that extent, similar to certain Investment Company Units (as defined in Rule 14.2), Tracking Fund Shares differ from Investment Company Units in one key way.²⁶ A series of Tracking Fund Shares will disclose the Tracking Basket on a

²⁶ See supra note 9.

daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.²⁷

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Tracking Basket is designed to closely track the daily performance of the holdings of a series of Tracking Fund Shares.

Given the correlation between the Tracking Basket and the Fund Portfolio,²⁸ the Exchange believes that the Tracking Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Tracking Fund Shares diverge. If shares began trading at a discount to the Tracking Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,²⁹ redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of shares would reduce the supply of shares in the market, and thus tend to drive up the shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Tracking Basket, Market Makers may sell shares short and take a long position in the Tracking

²⁷ See supra note 10.

²⁸ See supra note 11.

²⁹ See supra note 12.

Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Tracking Basket securities in an attempt to profit when shares are trading at a discount to the Tracking Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Tracking Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.³⁰ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Tracking Fund Shares will be sufficient to keep secondary market prices in line with NAV.

³⁰ See supra note 13.

The Exchange notes that a significant amount of information about each series of Tracking Fund Shares and its Fund Portfolio will be required to be made publicly available at all times. Each series of Tracking Fund Shares will be required to disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each series of Tracking Fund Shares will at a minimum be required to publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website for each series of Tracking Fund Shares will be required to include additional quantitative information updated on a daily basis, including, on a per share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website for each series of Tracking Fund Shares will also be required disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each series of Tracking Fund Shares as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Tracking Fund 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 Tracking Fund 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 Tracking Fund Shares traded 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. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted in proposed Rule 14.13(b)(4), 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 Tracking Fund Shares. The Exchange believes that this is appropriate because it will provide the Exchange and/or FINRA, on behalf of the Exchange, with access to the daily Fund Portfolio of any series of Tracking Fund Shares upon request on an as needed basis. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with trading series of Tracking Fund Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the shares.

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. The Exchange also notes that the Proxy Applications provide 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 Tracking Fund Shares.

Information regarding market price and trading volume of the shares for each series of Tracking Fund Shares will be required to 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 of each series of Tracking Fund Shares will be required to be published daily in the financial section of newspapers. Quotation and last sale information for the shares for each series of Tracking Fund Shares will be required to be available via the CTA high-speed line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in such shares to be subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.13(b)(3), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

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. Rather, the Exchange notes that the proposed rule change will facilitate the trading pursuant to UTP of a new type of actively-managed exchange-traded product, thus enhancing 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 neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act³¹ and Rule 19b-4(f)(6)³² thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

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-CboeEDGX-2020-026 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-CboeEDGX-2020-026. 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-CboeEDGX-2020-026 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.³³

Secretary

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe EDGX Exchange, Inc.

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Rule 14.1. Unlisted Traded Privileges

(a) Notwithstanding the requirements for listing set forth in these Rules, the Exchange may extend unlisted trading privileges (“UTP”) to any Equity Security (as defined below) that is listed on another national securities exchange or with respect to which unlisted trading privileges may otherwise be extended in accordance with Section 12(f) of the Exchange Act. Any such security will be subject to all Exchange trading rules applicable to equity securities, unless otherwise noted. The Exchange will not list any Equity Securities. Therefore, the provisions of Rules 14.2 through 14.1[2]3 that permit the listing of Equity Securities other than common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, American Depositary Receipts (“ADRs”), and contingent value rights (“CVRs”) will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rules 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. For purposes of this Chapter XIV, the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, Managed Portfolio Shares, [and] Exchange-Traded Fund Shares, and Tracking Fund Shares.

(b)-(c) No change.

Interpretations and Policies

.01 No change.

* * * * *

14.13. Tracking Fund Shares

(a) The Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Tracking Fund Shares that meet the criteria of this Rule 14.13.

(a) Applicability. This Rule 14.13 is applicable only to Tracking Fund Shares. Except to the extent inconsistent with this Rule 14.13, 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. Tracking Fund Shares are included within the definition of "security" or "securities" as such terms are used in the Rules of the Exchange.

(1) The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Tracking Fund Shares.

(2) Transactions in Tracking Fund Shares will occur throughout the Exchange's trading hours.

(3) Minimum Price Variance. The minimum price variation for quoting and entry of orders in Tracking Fund Shares is \$0.01.

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

(5) If the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a "fire wall" between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company's Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto.

(6) Any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. 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 Fund Portfolio or Tracking Basket.

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

(1) Tracking Fund Share. The term “Tracking Fund Share” means a security that: (i) 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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

(2) Fund Portfolio. The term “Fund Portfolio” means 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 net asset value at the end of the business day.

(3) Reporting Authority. The term “Reporting Authority” in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. A series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions.

(4) 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.

(5) Tracking Basket. The term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is

designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares. The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.13, to the extent applicable:

- (A) Ticker symbol;
- (B) CUSIP or other identifier;
- (C) Description of holding;
- (D) Quantity of each security or other asset held; and
- (E) Percentage weight of the holding in the portfolio.

(d) Initial and Continued Listing; Unlisted Trading Privileges. The Exchange may approve a series of Tracking Fund Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange subject to application of the following criteria:

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

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

(B) The Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Tracking Basket, and the Fund Portfolio.

(C) All Tracking Fund Shares shall have a stated investment objective, which shall be adhered to under Normal Market Conditions.

(2) Continued Listing and Trading or Trading Pursuant to Unlisted Trading Privileges. Each series of Tracking Fund Shares will be listed and traded or traded pursuant to unlisted trading privileges on the Exchange subject to application of the following continued listing criteria:

(A) Tracking Basket. The Tracking Basket will be publicly disseminated at least once daily and will be made available to all market participants at the same time.

(B) Fund Portfolio. The Fund Portfolio will at a minimum be publicly disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time.

(C) Suspension of trading or removal; termination of unlisted trading privileges. The Exchange will consider the suspension of trading in or removal from listing of or termination of unlisted trading privileges for a series of Tracking Fund Shares under any of the following circumstances:

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

(ii) if either the Tracking Basket or Fund Portfolio is not made available to all market participants at the same time;

(iii) if the Investment Company issuing the Tracking Fund 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 exemptive order or no-action relief granted by the Commission or the Commission staff under the Investment Company Act of 1940 to the Investment Company with respect to the series of Tracking Fund Shares;

(iv) if any of the requirements set forth in this rule are not continuously maintained;

(v) if any of the applicable Continued Listing Representations for the issue of Tracking Fund Shares are not continuously met; or

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

(D) Trading Halt.

(i) The Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for

reasons that, in the view of the Exchange, make trading in the series of Tracking Fund Shares inadvisable. These may include: (i) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(ii) If the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: the net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

(E) Termination. Upon termination of an Investment Company, the Exchange requires that Tracking Fund Shares issued in connection with such entity be removed from listing on the Exchange.

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

(e) Limitation of 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 Tracking Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Tracking Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Tracking Fund 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.

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