including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2018–39 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–Phlx–2018–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2018–39 and should be submitted on or before June 15, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–11225 Filed 5–24–18; 8:45 am]

BILLING CODE 8011–01–P

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83293; File No. SR–CboeBZX–2018–010]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt BZX Rule 14.11(k) To Permit the Listing and Trading of Managed Portfolio Shares and To List and Trade Shares of the ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge Mid Cap Growth ETF, ClearBridge Select ETF, and ClearBridge All Cap Value ETF

May 21, 2018.

On February 5, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares, and to list and trade shares (''Shares'') of the ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge Mid Cap Growth ETF, ClearBridge Select ETF, and ClearBridge All Cap Value ETF under proposed BZX Rule 14.11(k). The proposed rule change was published for comment in the **Federal Register** on February 20, 2018.[3] On April 3, 2018, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received four comment letters on the proposed rule change.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Exchange's Description of the Proposed Rule Change[8]

The Exchange proposes to adopt BZX Rule 14.11(k), which would govern the listing and trading of Managed Portfolio Shares.[9] The Exchange also proposes to list and trade Shares of the ClearBridge Appreciation ETF, ClearBridge Large Cap ETF, ClearBridge Mid Cap Growth ETF, ClearBridge Select ETF, and ClearBridge All Cap Value ETF under proposed BZX Rule 14.11(k) (each a ''Fund,'' and collectively the ''Funds'').

A. Description of the Funds

The portfolio for each Fund will consist primarily of long and/or short positions in U.S. exchange-listed securities and shares issued by other U.S. exchange-listed exchange-traded funds (''ETFs'').[10] All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

1. ClearBridge Appreciation ETF

The ClearBridge Appreciation ETF will seek to provide long-term appreciation of shareholders' capital.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82705 (February 13, 2018), 83 FR 7256 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 82984, 83 FR 15181 (April 9, 2018). The Commission designated May 21, 2018, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] *See* letters to Brent J. Fields, Secretary, Commission, from: (1) Todd J. Broms, Chief Executive Officer, Broms & Company LLC, dated March 13, 2018 (''Broms Letter''); (2) Simon P. Goulet, Co-Founder, Blue Tractor Group, LLC, dated March 19, 2018 (''Blue Tractor Letter I''); (3) Terence W. Norman, Founder, Blue Tractor Group, LLC, dated March 20, 2018 (''Blue Tractor Letter II''); and (4) Terence W. Norman, Founder, Blue Tractor Group, LLC, dated May 8, 2018 (''Blue Tractor Letter III''). The comment letters are available at *https://www.sec.gov/comments/sr-cboebzx-2018-010/cboebzx2018010.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] For a complete description of the Exchange's proposal, including a description of the Precidian ETF Trust II (''Trust''), *see* Notice, *supra* note 3.

[9] Proposed BZX Rule 14.11(k)(3)(A) defines the term ''Managed Portfolio Share'' as a security that (a) represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a specified aggregate minimum number of shares equal to a Creation Unit (as defined in proposed BZX Rule 14.11(k)(3)(C)), or multiples thereof, in return for a designated portfolio of securities (and/or an amount of cash) with a value equal to the next determined net asset value (''NAV''); and (c) when aggregated in the same specified aggregate number of shares equal to a Redemption Unit (as defined in proposed BZX Rule 14.11(k)(3)(D)), or multiples thereof, may be redeemed at the request of an authorized participant, which authorized participant will be paid through a confidential account established for its benefit (''Confidential Account'') a portfolio of securities and/or cash with a value equal to the next determined NAV.

[10] The Exchange represents that, for purposes of describing the holdings of the Funds, ETFs include Portfolio Depository Receipts (as described in BZX Rule 14.11(b)); Index Fund Shares (as described in BZX Rule 14.11(c)); and Managed Fund Shares (as described in BZX Rule 14.11(i)). The ETFs in which a Fund will invest all will be listed and traded on national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X, or –3X) ETFs.

The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed equity securities. The Fund will typically invest in medium and large capitalization companies, but may also invest in small capitalization companies.

2. ClearBridge Large Cap ETF

The ClearBridge Large Cap ETF will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by taking long and possibly short positions in equity securities or groups of equities that the portfolio managers believe will provide long term capital appreciation. The Fund will normally invest at least 80% of its net assets (plus borrowings for investment purposes) in stocks included in the Russell 1000 Index and ETFs that primarily invest in stocks in the Russell 1000 Index. The Fund will purchase securities that ClearBridge Investments, LLC (''Sub-Adviser'') believes are undervalued, and sell short securities that it believes are overvalued.

3. ClearBridge Mid Cap Growth ETF

The ClearBridge Mid Cap Growth ETF will seek long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The Fund may invest in securities of issuers of any market capitalization.

4. ClearBridge Select ETF

The ClearBridge Select ETF will seek to provide long-term growth of capital. The Fund will seek to achieve its investment objective by investing primarily in U.S. exchange-listed, publicly traded equity and equity-related securities of U.S. companies or other instruments with similar economic characteristics. The Fund may invest in securities of issuers of any market capitalization.

5. ClearBridge All Cap Value ETF

The ClearBridge All Cap Value ETF will seek long-term capital growth with current income as a secondary consideration. The Fund will seek to achieve its investment objective by investing primarily in common stocks and common stock equivalents, such as preferred stocks and securities convertible into common stocks, of companies the Sub-Adviser believes are undervalued in the marketplace. The Fund may invest up to 25% of its net assets in equity securities of foreign issuers through U.S. exchange-listed depositary receipts.

6. Other Investments

While each Fund, under normal market conditions,[11] will invest primarily in U.S. exchange-listed securities, as described above, each Fund may invest its remaining assets in other securities and financial instruments, as described below.

Each Fund may enter into repurchase agreements. It will be the policy of the Trust to enter into repurchase agreements only with recognized securities dealers, banks, and the Fixed Income Clearing Corporation, a securities clearing agency registered with the Commission.

Each Fund may invest up to 5% of its total assets in warrants, rights, and options.

Each Fund may invest a portion of its assets in cash or cash equivalents.[12]

Each Fund may invest in the securities of other investment companies (including money market funds) to the extent allowed by law.

7. Investment Restrictions

Each Fund may invest up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment),[13] consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are invested in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

Each Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.[14]

The Funds will not invest in securities listed on non-U.S. exchanges. The Funds also will not invest in futures, forwards, or swaps.

Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X, or –3X) ETFs.

B. Key Features of Managed Portfolio Shares

According to the Exchange, while funds issuing Managed Portfolio Shares would be actively-managed, and in that respect would be similar to Managed Fund Shares,[15] Managed Portfolio Shares would differ from Managed Fund Shares in the following respects:

- First, issues of Managed Fund Shares are required to disseminate their ''Disclosed Portfolio'' at least once daily.[16] By contrast, the portfolio for an issue of Managed Portfolio Shares would be disclosed only quarterly.
- Second, in connection with the creation of shares in Creation Unit size or the redemption of shares in Redemption Unit size, the delivery or receipt of any portfolio securities in kind would be effected through an agent (''AP Representative'') in a Confidential Account established for the benefit of the creating or redeeming authorized participant without disclosing the

[11] Proposed BZX Rule 14.11(k)(3)(F) defines the term ''normal market conditions'' as including, but 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.

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

[13] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

[14] 26 U.S.C. 851.

[15] Managed Fund Shares are shares of actively-managed funds listed and traded under BZX Rule 14.11(i).

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

identity of the securities to the authorized participant.

• Third, for each series of Managed Portfolio Shares, a Verified Intraday Indicative Value (''VIIV'') would be widely disseminated by the Reporting Authority (as defined in proposed BZX Rule 14.11(k)(3)(E)) and/or by one or more major market data vendors every second during the Exchange's Regular Trading Hours (between 9:30 a.m. and 4:00 p.m. Eastern Time).[17] The Exchange states that the dissemination of the VIIV will allow investors to determine the estimated intraday value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.[18]

C. Arbitrage of Managed Portfolio Shares

The Exchange asserts that market makers will be able to make efficient and liquid markets in the Shares priced near the VIIV as long as the VIIV is disseminated every second and market makers employ market making techniques such as ''statistical arbitrage,'' including correlation hedging, beta hedging, and dispersion trading, which the Exchange represents is currently used throughout the financial services industry, to make efficient markets in exchange-traded products.[19] According to the Exchange, if an authorized participant believes that the Shares are trading at a price that is higher than the value of the underlying portfolio—for example, if the market price for the Shares is higher than the VIIV—then the authorized participant may sell the Shares short and purchase securities that the authorized participant believes will track the movements of the Shares. When the spread narrows, the authorized participant would execute offsetting orders or enter an order with its AP Representative to create Shares. According to the Exchange, the AP Representative's execution of a Creation Unit in a Confidential Account, combined with the sale of the Shares, may create downward pressure on the price of the Shares and/or upward pressure on the price of the portfolio securities, bringing the market price of the Shares and the value of a Fund's portfolio securities closer together.

Similarly, according to the Exchange, an authorized participant could buy the Shares and instruct the AP Representative to redeem them and then sell the underlying portfolio securities from its Confidential Account when the Shares trade at a discount to the portfolio securities. According to the Exchange, the authorized participant's purchase of the Shares in the secondary market, combined with the sale of the portfolio securities from its Confidential Account, may create upward pressure on the price of the Shares and/or downward pressure on the price of portfolio securities, driving the market price of the Shares and the value of a Fund's portfolio securities closer together. The Exchange states that, according to Precidian Funds LLC, the investment adviser to the Trust (''Adviser''), this process is identical to how many authorized participants currently arbitrage existing traditional ETFs, except for the use of the Confidential Account.

D. The Creation and Redemption Procedures

The Exchange states that, generally, the Shares will be purchased and redeemed on an in-kind basis, so that, except where the purchase or redemption would include cash under the circumstances described in the applicable Fund's registration statement, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'') in their Confidential Account through an AP Representative. On any given business day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or redemption, as the ''Creation Basket.''

In the case of a redemption, the authorized participant will enter into an irrevocable redemption order and then immediately instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. After receipt of a redemption order, a Fund's custodian (''Custodian'') will typically deliver securities to the Confidential Account on a *pro rata* basis with a value approximately equal to the value of the Shares tendered for redemption at the order cut-off time established by the Fund. The Custodian will make delivery of the securities by appropriate entries on its books and records, transferring ownership of the securities to the authorized participant's Confidential Account, subject to delivery of the Shares redeemed. The AP Representative will in turn liquidate the securities based on instructions from the authorized participant.[20] The AP Representative will pay the liquidation proceeds net of expenses, plus or minus any cash balancing amount, to the authorized participant through the Depository Trust Company.[21] The redemption securities that the Confidential Account receives are expected to mirror the portfolio holdings of a Fund *pro rata.*

In the case of a creation, the authorized participant will enter into an

[17] Proposed BZX Rule 14.11(k)(3)(B) defines the VIIV as the estimated indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day, and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during Regular Trading Hours.

[18] According to the Exchange, the VIIV should not be viewed as a ''real-time'' update of the NAV, because the VIIV may not be calculated in the same manner as the NAV, which will be computed once a day.

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

[20] The Exchange represents that an authorized participant will issue execution instructions to the AP Representative and be responsible for all associated profit or losses. Like a traditional ETF, the authorized participant has the ability to sell the basket securities at any point during normal trading hours.

[21] According to the Exchange, under applicable provisions of the Internal Revenue Code, the authorized participant is expected to be deemed a ''substantial owner'' of the Confidential Account because it receives distributions from the Confidential Account. As a result, the Exchange states, all income, gain, or loss realized by the Confidential Account will be directly attributed to the authorized participant. The Exchange also states that, in a redemption, the authorized participant will have a basis in the distributed securities equal to the fair market value at the time of the distribution, and any gain or loss realized on the sale of those Shares will be taxable income to the authorized participant.

irrevocable creation order with the Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative will then purchase the necessary securities in the Confidential Account. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account will be contributed in-kind to the Fund.

The Exchange states that, in purchasing the necessary securities for creation purposes, and, conversely, in selling the portfolio securities for redemption purposes, the AP Representative will be required, by the terms of the Confidential Account agreement, to obfuscate the trades by use of tactics such as breaking the trades into multiple purchases or sales and transacting in multiple marketplaces.

E. Availability of Information

Each Fund will be required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the Investment Company Act of 1940 (''1940 Act''), and to file its complete portfolio schedules for the first and third fiscal quarters on Form N–Q under the 1940 Act, within 60 days of the end of the quarter. Form N–Q requires funds to file the same schedules of investments that are required in annual and semi-annual reports to shareholders. The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

In addition, the VIIV will be widely disseminated by the Reporting Authority and/or one or more major market data vendors every second during the Exchange's Regular Trading Hours. According to the Exchange, the VIIV will include all accrued income and expenses of a Fund, and any extraordinary expenses booked during the day that would be taken into account in calculating the Fund's NAV will also be taken into account in calculating the VIIV.

For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer.[22] According to the Exchange, by utilizing mid-point pricing for purposes of VIIV calculation, stale prices are eliminated and a more accurate representation of the real-time value of the underlying securities is provided to the market. Specifically, according to the Exchange, quotations based on the mid-point of bid/ask spreads more accurately reflect current market sentiment by providing real time information on where market participants are willing to buy or sell securities at that point in time. The Exchange also believes that the use of quotations will dampen the impact of any momentary spikes in the price of a portfolio security.

According to the Exchange, each Fund will utilize two separate pricing feeds to provide two separate sources of pricing information. Each Fund will also utilize a ''Pricing Verification Agent'' and establish a computer-based protocol that will permit the Pricing Verification Agent to continuously compare the multiple intraday indicative values on a real time basis.[23] A single VIIV will be disseminated publicly for each Fund; however, the Pricing Verification Agent will continuously compare the public VIIV against a non-public alternative intraday indicative value to which the Pricing Verification Agent has access. Upon notification to the Exchange by the issuer of a series of Managed Portfolio Shares, or its agent, that the public VIIV and non-public alternative intraday indicative value differ by more than 25 basis points for 60 seconds, the Exchange will halt trading as soon as practicable in the Shares until the discrepancy is resolved.[24] Each Fund's board of directors will review the procedures used to calculate the VIIV and maintain its accuracy as appropriate, but not less than annually. The specific methodology for calculating the VIIV will be disclosed on each Fund's website.

F. Surveillance

The Exchange represents that trading in the Shares will be subject to the Exchange's surveillance procedures for derivative products. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.[25]

The Exchange represents that the Adviser will make available daily to FINRA and the Exchange the portfolio holdings of each Fund in order to facilitate the performance of the surveillances. In addition, the Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.

II. Summary of Comment Letters

The Commission has received four comment letters on the proposed rule change, each of which expresses opposition to the proposed rule change.[26] As of the date of this order instituting proceedings, the Exchange has not submitted a response to the comments.

A. *Broms Letter.*[27] The commenter opposes the proposed rule change and raises the following concerns:[28]

- Selective disclosure of confidential portfolio information to AP Representatives for trading on behalf of authorized participants violates federal securities law and facilitates illegal insider trading;
- The portfolio holdings can be reverse engineered, resulting in harm to the Funds' shareholders;

[22] If the Adviser determines that the mid-point of the bid/ask spread is inaccurate, a Fund will use fair value pricing.

[23] The Exchange states that a Fund's Custodian will provide, on a daily basis, the identities and quantities of portfolio securities that will form the basis for a Fund's calculation of NAV at the end of the business day, plus any cash in the portfolio, to the Pricing Verification Agent for purposes of pricing. According to the Exchange, the Pricing Verification Agent will utilize at least two separate calculation engines to calculate intraday indicative values, based on the mid-point between the disseminated current national best bid and offer, to provide the real-time value on a per Share basis of each Fund's holdings every second during Regular Trading Hours.

[24] According to the Exchange, a continuous deviation for 60 seconds could indicate an error in the feed or in a calculation engine used to calculate the intraday indicative values. The Exchange states that the Trust reserves the right to change these thresholds to the extent deemed appropriate and approved by a Fund's board of directors.

[25] The Exchange represents that the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying stocks, ETFs, and exchange-listed options from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[26] *See supra* note 6.

[27] The Broms Letter is available at *https://www.sec.gov/comments/sr-cboebzx-2018-010/cboebzx2018010-3254113-162031.pdf.*

[28] The commenter also generally references concerns that it raised in its comment letter related to a similar, previous proposal filed by the Exchange to list and trade Managed Portfolio Shares, which the Exchange withdrew. *See* Securities Exchange Act Release No. 80911 (June 13, 2017), 82 FR 27925 (June 19, 2017) (SR–BatsBZX–2017–30) (''Prior Proposal''); and letter to Brent J. Fields, Secretary, Commission, from Todd J. Broms, Chief Executive Officer, Broms & Company LLC, dated July 10, 2017, available at *https://www.sec.gov/comments/sr-batsbzx-2017-30/batsbzx201730-1842158-155104.pdf.*

• The Funds would serve no useful public purpose without clear protections against reverse engineering and every other plausible means by which confidential portfolio holdings information could be used by other market participants to harm the Funds' shareholders; and

• Authorized participants and other market makers cannot engage in bona fide arbitrage, and the Shares will not trade efficiently without an effective arbitrage mechanism, with particularly poor trading performance to be expected during periods of market stress and volatility.

B. *Blue Tractor Letter I.*[29] The commenter opposes the proposed rule change and expresses concern that the Funds can be reverse engineered to determine their composition and trading strategies, and that ''predatory traders'' can use such information in order to front run the Funds.

C. *Blue Tractor Letter II.*[30] The commenter opposes the proposed rule change and raises the following concerns: [31]

• Under the proposal, market participants will not be able to engage in bona fide arbitrage or efficient statistical arbitrage to keep the price of Shares close to a Fund's NAV; [32]

• Funds can be reverse engineered to determine the composition of the portfolio securities, which will make the Funds susceptible to front-running;

• The proposed fund structure will result in asymmetric disclosure of confidential portfolio information to selected parties;

• Details regarding the VIIV generation process, as well as calculation engine verification procedures, are inadequate for market participants and market makers;

• One second dissemination of VIIVs in a high frequency trading environment is inadequate for authorized participants and market makers and not of value to retail investors; and

• Requiring AP Representatives to obfuscate trades for creation and redemption purposes in an effort to keep portfolio composition confidential will delay execution and increase costs for authorized participants.

D. *Blue Tractor Letter III.*[33] The commenter reiterates that the Funds will be susceptible to reverse engineering resulting in predatory front-running, and will not have efficient primary and secondary market trading. The commenter again requests that the Commission include in its deliberation the comment letters it submitted on the Prior Proposal.

III. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2018–010 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [34] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[35] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, . . . 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.'' [36]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Exchange Act,[37] any request for an opportunity to make an oral presentation.[38]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by June 15, 2018. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by June 29, 2018.

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[39] the issues raised by the commenters, and any other issues raised by the proposed rule change under the Exchange Act. In particular, the Commission seeks commenters' views regarding the concerns raised with respect to selective disclosure of confidential portfolio information,

[29] The Blue Tractor Letter I is available at *https://www.sec.gov/comments/sr-cboebzx-2018-010/cboebzx2018010-3287448-162066.pdf.*

[30] The Blue Tractor Letter II is available at *https://www.sec.gov/comments/sr-cboebzx-2018-010/cboebzx2018010-3294085-162071.pdf.*

[31] Although the commenter purports to comment on the Notice, the comments are more directly related to the Trust's December 4, 2017, exemptive application. *See* Fifth Amended and Restated Application for an Order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (File No. 812–14405), dated December 4, 2017. The commenter also references concerns that it raised in its comment letters related to the Prior Proposal. *See* letters to Brent J. Fields, Secretary, Commission, from Terence W. Norman, Founder, Blue Tractor Group, LLC, dated August 1, 2017, available at *https://www.sec.gov/comments/sr-batsbzx-2017-30/batsbzx201730-2161995-157800.pdf* and Terence W. Norman, Founder, Blue Tractor Group, LLC, dated December 5, 2017, available at *https://www.sec.gov/comments/sr-batsbzx-2017-30/batsbzx201730-2755179-161594.pdf.*

[32] The commenter also notes that market makers will not be able to construct optimized tracking portfolios using the proposed fund structure and cites to comment letters that it submitted in response to a proposal filed by NYSE Arca, Inc. to list and trade Managed Portfolio Shares, which was withdrawn. *See* Securities Exchange Act Release No. 80553 (April 28, 2017), 82 FR 20932 (May 4, 2017) (SR–NYSEArca–2017–36); and letters to Brent J. Fields, Secretary, Commission, from Simon P. Goulet, Co-Founder, Blue Tractor Group, LLC, dated November 22, 2017, available at *https://www.sec.gov/comments/sr-nyseArca-2017-36/nysearca201736-2735961-161533.pdf* and Terence W. Norman, Founder, Blue Tractor Group, LLC, dated October 31, 2017, available at *https://www.sec.gov/comments/sr-nyseArca-2017-36/nysearca201736-2659706-161420.pdf.*

[33] The Blue Tractor Letter III is available at *https://www.sec.gov/comments/sr-cboebzx-2018-010/cboebzx2018010-3604029-162352.pdf.*

[34] 15 U.S.C. 78s(b)(2)(B).

[35] *Id.*

[36] 15 U.S.C. 78f(b)(5).

[37] 17 CFR 240.19b–4.

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

[39] *See supra* note 3.

namely, whether such disclosure is consistent with the requirement of Section 6(b)(5) that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices. The Commission also seeks commenters' views regarding the various concerns raised about how the Shares may trade in the secondary market, including the calculation engine verification and trading halt procedures and the potential for poor trading performance during times of market stress and volatility. In this regard, the Commission specifically seeks commenters' views on whether the proposal is consistent with the maintenance of a fair and orderly market.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2018–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2018–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2018–010 and should be submitted by June 15, 2018. Rebuttal comments should be submitted by June 29, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[40]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–11223 Filed 5–24–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83292; File No. SR–CBOE–2018–040]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 5.3, Criteria for Underlying Securities

May 21, 2018.

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 May 7, 2018, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') 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 Act[3] 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 to amend Rule 5.3, Interpretation and Policy .01.

(additions are italicized; deletions are [bracketed])

* * * * *

Cboe Exchange, Inc.

Rules

* * * * *

Rule 5.3. Criteria for Underlying Securities

(a)–(b) (No change).

. . . Interpretations and Policies:

.01 The Board of Directors has established guidelines to be considered by the Exchange in evaluating potential underlying securities for Exchange option transactions. Absent exceptional circumstances with respect to Paragraphs (a)(1) or (2), or (b)(1) or (2) listed below, at the time the Exchange selects an underlying security for Exchange option transactions, the following guidelines with respect to the issuer shall be met.

(a) (No change).

(b) Guidelines applicable to the market for the security are:

(1) (No change).

(2)

(A) If the underlying security is a ''covered security'' as defined under Section 18(b)(1)(A) of the Securities Act of 1933, the market price per share of the underlying security has been at least $3.00 for the previous [five]*three* consecutive business days preceding the date on which the Exchange submits a certificate to the Options Clearing Corporation for listing and trading. For purposes of this Interpretation .01(b)(2)(A), the market price of such underlying security is measured by the closing price reported in the primary market in which the underlying security is traded.

(B) (No change).

(c) (No change).

.02–.13 (No change).

* * * * *

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), 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.

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[40] 17 CFR 200.30–3(a)(57).

[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).