

to make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-079, and should be submitted on or before November 26, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33285; 812-14945]

Cushing Asset Management, LP and Cushing ETF Trust

October 30, 2018.

AGENCY: Securities and Exchange Commission (“Commission”).

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (“Act”) for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements in rule 20a-1 under the Act, Item 19(a)(3) of Form N-1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X (“Disclosure Requirements”). The requested exemption would permit an investment adviser to hire and replace certain sub-advisers without shareholder approval and grant relief from the Disclosure Requirements as they relate to fees paid to the sub-advisers.

APPLICANTS: Cushing ETF Trust (the “Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Cushing Asset Management, LP (the “Initial Adviser”), a Texas limited partnership registered as an investment adviser under the Investment Advisers Act of 1940.

FILING DATES: The application was filed on August 31, 2018.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission’s Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission

by 5:30 p.m. on November 26, 2018, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission’s Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

Applicants: Cushing Asset Management, LP and Cushing ETF Trust, 8117 Preston Road, Suite 440, Dallas, TX 75225.

FOR FURTHER INFORMATION CONTACT: Rachel Loko, Senior Counsel, at (202) 551-6883, or Aaron Gilbride, Branch Chief, at (202) 551-6906 (Division of Investment Management, Chief Counsel’s Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission’s website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Summary of the Application

1. The Initial Adviser is the investment adviser to the Cushing Energy & MLP ETF, Cushing Utility & MLP ETF, Cushing Transportation & MLP ETF and Cushing Energy Supply Chain & MLP ETF (together, the “Initial Funds”), each a series of the Trust, pursuant to an investment management agreement with the Trust (“Investment Management Agreement”).¹ Under the terms of the Investment Management

¹ Applicants request relief with respect to the Initial Funds, as well as to any future series of the Trust and any other existing or future registered open-end management investment company or series thereof that, in each case, is advised by the Initial Adviser or any entity controlling, controlled by, or under common control with, the Initial Adviser or its successors (each, also an “Adviser”), uses the multi-manager structure described in the application, and complies with the terms and conditions set forth in the application (each, a “Subadvised Fund”). For purposes of the requested order, “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. Future Subadvised Funds may be operated as a master-feeder structure pursuant to section 12(d)(1)(E) of the Act. In such a structure, certain series of the Trust (each, a “Feeder Fund”) may invest substantially all of their assets in a Subadvised Fund (a “Master Fund”) pursuant to section 12(d)(1)(E) of the Act. No Feeder Fund will engage any sub-advisers other than through approving the engagement of one or more of the Master Fund’s sub-advisers.

Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (“Board”), provides continuous investment management of the assets of each Subadvised Fund. Consistent with the terms of the Investment Management Agreement, the Adviser may, subject to the approval of the Board, delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to one or more Sub-Advisers.² The Adviser will continue to have overall responsibility for the management and investment of the assets of each Subadvised Fund. The Adviser will evaluate, select, and recommend Sub-Advisers to manage the assets of a Subadvised Fund and will oversee, monitor and review the Sub-Advisers and their performance and recommend the removal or replacement of Sub-Advisers.

2. Applicants request an order to permit the Adviser, subject to the approval of the Board, to enter into investment sub-advisory agreements with the Sub-Advisers (each, a “Sub-Advisory Agreement”) and materially amend such Sub-Advisory Agreements without obtaining the shareholder approval required under section 15(a) of the Act and rule 18f-2 under the Act.³ Applicants also seek an exemption from the Disclosure Requirements to permit a Subadvised Fund to disclose (as both a dollar amount and a percentage of the Subadvised Fund’s net assets): (a) The aggregate fees paid to the Adviser and any Wholly-Owned Sub-Adviser; (b) the aggregate fees paid to Non-Affiliated Sub-Advisers; and (c) the fee paid to each Affiliated Sub-Adviser (collectively, Aggregate Fee Disclosure”).⁴

² As used herein, a “Sub-Adviser” for a Subadvised Fund is (1) an indirect or direct “wholly owned subsidiary” (as such term is defined in the Act) of the Adviser for that Subadvised Fund, or (2) a sister company of the Adviser for that Subadvised Fund that is an indirect or direct “wholly-owned subsidiary” of the same company that, indirectly or directly, wholly owns the Adviser (each of (1) and (2) a “Wholly-Owned Sub-Adviser” and collectively, the “Wholly-Owned Sub-Advisers”), or (3) not an “affiliated person” (as such term is defined in section 2(a)(3) of the Act) of the Subadvised Fund, any Feeder Fund invested in a Master Fund, the Trust, or the Adviser, except to the extent that an affiliation arises solely because the Sub-Adviser serves as a sub-adviser to a Subadvised Fund (“Non-Affiliated Sub-Advisers”).

³ The requested relief will not extend to any sub-adviser, other than a Wholly-Owned Sub-Adviser, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Fund, of any Feeder Fund, or of the Adviser, other than by reason of serving as a sub-adviser to one or more of the Subadvised Funds (“Affiliated Sub-Adviser”).

⁴ For any Subadvised Fund that is a Master Fund, the relief would also permit any Feeder Fund

¹⁴ 17 CFR 200.30-3(a)(12).

3. Applicants agree that any order granting the requested relief will be subject to the terms and conditions stated in the application. Such terms and conditions provide for, among other safeguards, appropriate disclosure to Subadvised Funds' shareholders and notification about sub-advisory changes and enhanced Board oversight to protect the interests of the Subadvised Funds' shareholders.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such relief is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard because, as further explained in the application, the Investment Management Agreements will remain subject to shareholder approval, while the role of the Sub-Advisers is substantially equivalent to that of individual portfolio managers, so that requiring shareholder approval of Sub-Advisory Agreements would impose unnecessary delays and expenses on the Subadvised Funds. Applicants believe that the requested relief from the Disclosure Requirements meets this standard because it will improve the Adviser's ability to negotiate fees paid to the Sub-Advisers that are more advantageous for the Subadvised Funds.

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

Eduardo A. Aleman,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84504; File No. SR-NYSEArca-2018-43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Regarding Investments of the First Trust TCW Unconstrained Plus Bond ETF

October 30, 2018.

On July 11, 2018, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed

invested in that Master Fund to disclose Aggregate Fee Disclosure.

with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change seeking to modify investments of the First Trust TCW Unconstrained Plus Bond ETF, the shares of which are currently listed and traded on the Exchange pursuant to NYSE Arca Rule 8.600-E. The proposed rule change was published for comment in the **Federal Register** on August 1, 2018.³

On September 14, 2018, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended the time 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 no comment letters on the proposed rule change. The Commission is publishing this order to institute proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal⁷

The Exchange proposes to make changes to the investments of the First Trust TCW Unconstrained Plus Bond ETF ("Fund"), the shares ("Shares") of which are currently listed and traded on the Exchange under NYSE Arca Rule 8.600-E, which governs the listing and trading of Managed Fund Shares on the Exchange. According to the Exchange, the Shares of the Fund commenced trading on the Exchange on June 5, 2018 pursuant to the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600-E.

The Shares are offered by First Trust Exchange-Traded Fund VIII ("Trust"), which is registered with the Commission as an open-end

management investment company.⁸ The Fund is a series of the Trust. First Trust Advisors L.P. is the investment adviser ("Adviser") to the Fund. TCW Investment Management Company LLC ("TCW" or the "Sub-Adviser"), serves as the Fund's investment sub-adviser.⁹ First Trust Portfolios L.P. is the distributor for the Fund's Shares. The Bank of New York Mellon acts as the administrator, custodian and transfer agent for the Fund.

A. Principal Investments of the Fund

According to the Exchange, the investment objective of the Fund is to seek to maximize long-term total return. Under normal market conditions,¹⁰ the Fund intends to invest at least 80% of its net assets (including investment

⁸ The Exchange represents that the Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On May 29, 2018, the Trust filed with the Commission its registration statement ("Registration Statement") on Form N-1A under the Securities Act of 1933 and under the 1940 Act relating to the Fund (File Nos. 333-210186 and 811-23147). In addition, the Exchange represents that the Trust has obtained an order from the Commission granting certain exemptive relief under the 1940 Act. See Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812-13795).

⁹ According to the Exchange, the Adviser and Sub-Adviser are not registered as broker-dealers. The Adviser is affiliated with First Trust Portfolios L.P., a broker-dealer, and has implemented and will maintain a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a fire wall with respect to its broker-dealer affiliates regarding access to information concerning the composition and/or changes to the portfolio. In the event (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to relevant personnel and any broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

¹⁰ The term "normal market conditions" is defined in NYSE Arca Rule 8.600-E(c)(5). On a temporary basis, including for defensive purposes, during the initial invest-up period (i.e., the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (i.e., rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of the Fund's net assets as of the opening of business on the first day of such periods), the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which the Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83720 (July 26, 2018), 83 FR 37560 ("Notice").

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 84123 (September 14, 2018), 83 FR 47654 (September 20, 2018). The Commission designated October 30, 2018, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ The Commission notes that additional information regarding, among other things, the Shares, Fund, investment objective, permitted investments, investment strategies and methodology, investment restrictions, investment adviser and sub-adviser, creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures, can be found in the Notice (see *supra* note 3) and the Registration Statement (see *infra* note 8), as applicable.