

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87059; File No. SR-CboeBZX-2019-057]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change to List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF Under Currently Proposed Rule 14.11(k)

September 23, 2019.

On June 6, 2019, 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 list and trade shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF (each a “Fund” and, collectively, the “Funds”) under proposed BZX Rule 14.11(k).³ The proposed rule change was published for comment in the **Federal Register** on June 25, 2019.⁴ On August 2, 2019, pursuant to Section 19(b)(2) of the Exchange Act,⁵ 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.⁶ The Commission has received no comments on the proposed rule change. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86157 (June 19, 2019), 84 FR 29892 (June 25, 2019) (“Managed Portfolio Shares Proposal”). Pursuant to the Managed Portfolio Shares Proposal, the Exchange proposes to adopt new BZX Rule 14.11(k) to permit the listing and trading of Managed Portfolio Shares. The Managed Portfolio Shares Proposal has not yet been acted upon by the Commission.

⁴ See Securities Exchange Act Release No. 86155 (June 19, 2019), 84 FR 29912 (“Notice”).

⁵ 15 U.S.C. 78s(b)(2).

⁶ See Securities Exchange Act Release No. 86557, 84 FR 39024 (August 8, 2019). The Commission designated September 23, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁷ 15 U.S.C. 78s(b)(2)(B).

I. Summary of the Exchange’s Description of the Proposed Rule Change ⁸

The Exchange proposes to list and trade shares of the Funds under proposed BZX Rule 14.11(k).⁹ The shares of each Fund will be issued by American Century ETF Trust (“Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.¹⁰ The investment adviser to the Trust will be American Century Investment Management, Inc. (“Adviser”).¹¹ Foreside Fund Services, LLC will serve as the distributor of each Fund’s shares.

A. American Century Focused Dynamic Growth ETF

The Exchange states that the American Century Focused Dynamic Growth ETF seeks long-term capital growth. Under Normal Market Conditions,¹² the Fund intends to invest primarily in U.S. exchange-listed equity securities. In addition, the Fund may invest in exchange-traded funds (“ETFs”),¹³ exchange-listed American

⁸ For a complete description of the Exchange’s proposal, see the Notice, *supra* note 4.

⁹ For a complete description of proposed BZX Rule 14.11(k), see the Managed Portfolio Shares Proposal, *supra* note 3.

¹⁰ The Trust is registered under the Investment Company Act of 1940 (“1940 Act”). On June 18, 2018, the Trust filed a registration statement on Form N-1A relating to the Funds (File No. 811-23305). The Exchange states that the Trust filed an application for exemptive relief under the 1940 Act (File No. 812-15035), and shares of the Funds will not be issued until the Commission has issued an order granting exemptive relief.

¹¹ The Exchange states that the Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition of and/or changes to a Fund’s portfolio. The Exchange further states that in the event (a) the Adviser becomes registered as a broker-dealer or becomes 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 its relevant personnel or its 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.

¹² The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹³ 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

Depository Receipts (“ADRs”), U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents ¹⁴ without limitation.

B. American Century Focused Large Cap Value ETF

The Exchange states that the American Century Focused Large Cap Value ETF will seek long-term capital growth. Under Normal Market Conditions, the Fund intends to invest primarily in U.S. exchange-listed equity securities. In addition, the Fund may invest in ETFs, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents without limitation.

C. Investment Restrictions

All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges. The Funds will not invest in forwards or swaps.

Each Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.

Each Fund may hold up to an aggregate amount of 15% of its total assets in illiquid assets,¹⁵ consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an

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 U.S. 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.

¹⁴ For purposes of this filing, “Cash Equivalents” are short-term instruments with maturities of less than three months, which include only the following: (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.

¹⁵ 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).

adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity. 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. In any event, the Funds will not purchase any securities that are illiquid investments at the time of purchase.

The shares of each Fund will conform to the initial and continued listing criteria under proposed BZX Rule 14.11(k). The Exchange states that each Fund's holdings will also meet the generic listing standards applicable to series of Managed Fund Shares under BZX Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Managed Portfolio Shares, the Exchange believes that the overarching policy issues related to liquidity, market capitalization, diversity, and concentration of portfolio holdings that BZX Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Managed Portfolio Shares.

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2019–057 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act¹⁶ 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,¹⁷ 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.”¹⁸

III. 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, any request for an opportunity to make an oral presentation.¹⁹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by October 18, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by November 1, 2019.

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,²⁰ and any other issues raised by the proposed rule change under the Exchange Act. In particular, the Commission seeks commenters' views regarding whether the Exchange's proposal to list and trade the Funds under proposed Rule 14.11(k) (Managed Portfolio Shares), which would be actively managed exchange-traded products for which the portfolio holdings would be disclosed on a quarterly, rather than daily, basis, is adequately designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest, and is

consistent with the maintenance of a fair and orderly market under the Exchange 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–CboeBZX–2019–057 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–CboeBZX–2019–057. 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–2019–057 and should be submitted on or before October 18, 2019. Rebuttal comments should be submitted by November 1, 2019.

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ Section 19(b)(2) of the Exchange Act, as amended by the Securities Act 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 Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁰ See *supra* note 4.

¹⁶ 15 U.S.C. 78s(b)(2)(B).

¹⁷ *Id.*

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Jill M. Peterson,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33631; 812-15034]

Core Alternative Capital, LLC, Listed Funds Trust, and Quasar Distributors, LLC

September 24, 2019.

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

ACTION: Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the Act and rule 22c-1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act, and under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act. The requested order would permit (a) actively-managed series of certain open-end management investment companies (“Funds”) to issue shares redeemable in large aggregations only (“Creation Units”); (b) secondary market transactions in Fund shares to occur at negotiated market prices rather than at net asset value (“NAV”); (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of shares for redemption; (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of Creation Units; (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the Funds (“Funds of Funds”) to acquire shares of the Funds; (f) certain Funds (“Feeder Funds”) to create and redeem Creation Units in-kind in a master-feeder structure; and (g) the Funds to issue shares in less than Creation Unit size to investors participating in a distribution reinvestment program.

Applicants: Core Alternative Capital, LLC (“Initial Adviser”), a Georgia limited liability company registered as

an investment adviser under the Investment Advisers Act of 1940, Listed Funds Trust (“Trust”), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series, and Quasar Distributors, LLC (“Initial Distributor”), a Delaware limited liability company registered as a broker-dealer under the Securities Exchange Act of 1934 (“Exchange Act”).

Filing Dates: The application was filed on May 17, 2019 and amended on September 23, 2019.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing 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 October 21, 2019, 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, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants, c/o Laura Flores, Morgan, Lewis & Bockius LLP, 1111 Pennsylvania Avenue NW, Washington, DC 20004; or Kent P. Barnes, U.S. Bank Global Fund Services, 615 E Michigan Street, Milwaukee, WI 53202.

FOR FURTHER INFORMATION CONTACT: Zeena Abdul-Rahman, Senior Counsel, at (202) 551-4099, or Andrea Ottomanelli Magovern, Branch Chief, at (202) 551-6825 (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. Applicants request an order that would allow Funds to operate as actively-managed exchange traded funds (“ETFs”).¹ Fund shares will be

purchased and redeemed at their NAV in Creation Units only (other than pursuant to a distribution reinvestment program described in the application). All orders to purchase Creation Units and all redemption requests will be placed by or through an “Authorized Participant” which will have signed a participant agreement with the Distributor. Shares will be listed and traded individually on a national securities exchange, where share prices will be based on the current bid/offer market. Certain Funds may operate as Feeder Funds in a master-feeder structure. Any order granting the requested relief would be subject to the terms and conditions stated in the application.

2. Each Fund will consist of a portfolio of securities and other assets and investment positions (“Portfolio Instruments”). Each Fund will disclose on its website the identities and quantities of the Portfolio Instruments that will form the basis for the Fund’s calculation of NAV at the end of the day.

3. Shares will be purchased and redeemed in Creation Units only and generally on an in-kind basis, or issued in less than Creation Unit size to investors participating in a distribution reinvestment program. Except where the purchase or redemption will include cash under the limited circumstances specified in the application, purchasers will be required to purchase Creation Units by depositing specified instruments (“Deposit Instruments”), and shareholders redeeming their shares will receive specified instruments (“Redemption Instruments”). The Deposit Instruments and the Redemption Instruments will each correspond pro rata to the positions in the Fund’s portfolio (including cash positions) except as specified in the application.

4. Because shares will not be individually redeemable, applicants request an exemption from section 5(a)(1) and section 2(a)(32) of the Act that would permit the Funds to register as open-end management investment

as well as to additional series of the Trust and any other open-end management investment companies or series thereof that currently exist or that may be created in the future (each, included in the term “Fund”), each of which will operate as an actively-managed ETF. Any Fund will (a) be advised by the Initial Adviser or an entity controlling, controlled by, or under common control with the Initial Adviser (each such entity and any successor thereto is included in the term “Adviser”) and (b) comply with the terms and conditions of the application. For purposes of the requested Order, the term “successor” is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

²¹ 17 CFR 200.30-3(a)(57).

¹ Applicants request that the order apply to the new series of the Trust described in the application.