SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89019; File No. SR–CboeEDGA–2020–016]

Self-Regulatory Organizations; Cboe EDGA 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

June 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2020, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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. 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/equities/regulation/rule_filings/edga/*), 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 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 also proposes to correct a typographical error in Exchange Rule 14.1.

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 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–3[8] (''Rule 10A–3'') and 10C–1[9] (''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 Securities[10] 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.

[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).

[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).

[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 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.

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,[11] while the Exchange only trades securities pursuant to UTP.[12] Accordingly, the proposed Rule[13] 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 (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 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 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

[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.

[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 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.

[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.

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 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.

The Exchange also proposes to correct a typographical error by removing a duplicate (a) in Exchange Rule 14.1.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[23] in general and Section 6(b)(5) of the Act[24] 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 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 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

[22] With respect to trading in Tracking Fund Shares, all of the EDGA 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).

[25] *See* proposed Rule 14.13(c)(4).

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 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 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.

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

[26] *See* supra note 11.

[27] *See* supra note 12.

[28] *See* supra note 13.

[29] *See* supra note 14.

[30] *See* supra note 15.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) 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 Act[31] and Rule 19b–4(f)(6) thereunder.[32]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[33] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange states that a waiver of the operative delay is consistent with the protection of investors and the public interest because it would allow for the immediate trading, pursuant to UTP, of Tracking Fund Shares on the Exchange and therefore would provide investors with an additional trading venue option. In addition, the proposal would correct a typographical error in the existing rule text. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[35]

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.

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:

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[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f)(6). In addition, Rule19b–4(f)(6)(iii) requires a self-regulatory organization to give 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 has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

[35] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGA–2020–016 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–CboeEDGA–2020–016. 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–CboeEDGA–2020–016 and should be submitted on or before July 1, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

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[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89012; File No. SR–CboeBYX–2020–017]

Self-Regulatory Organizations; Cboe BYX 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

June 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2020, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 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 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/equities/regulation/rule_filings/byx/*), 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 BZX Exchange, Inc. (''BZX'') Rule 14.11(m).[6]

[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).

[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).

[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–

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