

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90804; File Nos. SR–CboeBYX–2020–032, SR–CboeBZX–2020–083, SRCboeEDGA–2020–029, SR–CboeEDGX–2020–055]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Cboe BZX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Order Granting Approval of Proposed Rule Changes To Revise Each Exchange's Process for Re-Opening Trading of NYSE-Listed Securities Outside of Regular Trading Hours

December 28, 2020.

I. Introduction

On November 5, 2020, Cboe BYX Exchange, Inc. (“CboeBYX”), Cboe BZX Exchange, Inc. (“CboeBZX”), Cboe EDGA Exchange, Inc. (“CboeEDGA”) and Cboe EDGX Exchange, Inc. (“CboeEDGX,” and collectively, the “Exchanges”) filed 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 proposed rule changes to revise each Exchange’s process for re-opening trading of a security listed on the New York Stock Exchange LLC (“NYSE”) outside of regular trading hours. The proposed rule changes were published for comment in the **Federal Register** on November 19, 2020.³ The Commission received no comments on the proposed rule changes. This order approves the proposed rule changes.

II. Description of the Proposed Rule Changes

Outside of regular trading hours, the Exchanges’ operate extra-hours sessions from 7:00 a.m. to 8:00 a.m. Eastern Time (“ET”),⁴ 8:00 a.m. to 9:30 a.m. ET,⁵ and from 4:00 p.m. to 8:00 p.m. ET.⁶ The Exchanges have proposed to change the manner by which they re-open trading of an NYSE-listed security on their

respective markets if NYSE lifts the halt, suspension, or pause in that security during an extra-hours session.⁷ Under the Exchanges’ current rules and procedures, the only way to re-open trading in an extra-hours session of an NYSE-listed security that has been halted, suspended, or paused by NYSE is for Exchange staff to manually re-open the market for that security.⁸ The Exchanges have represented that, under their current procedures, Exchange staff would have the authority to re-open their markets for trading an NYSE-listed security during an extra-hours session if two conditions are met: (1) NYSE lifts the halt, suspension, or pause in that security; and (2) one or more other exchanges resumes quoting the security.⁹ Furthermore, under current procedures, Exchange staff would ascertain whether these two conditions had been met and, if so, re-open the market manually. The Exchanges believe that this manual process is inefficient, and state that members have requested that the Exchanges replace this process with a more efficient automated process.

The Exchanges have proposed to reconfigure their systems such that, when NYSE has halted, suspended, or paused trading in one of its listed securities and subsequently lifts the halt, suspension, or pause during an extra-hours session, the Exchanges would re-open their respective markets in that security automatically when those two conditions are present, thereby eliminating the need for manual intervention. The Exchanges are not proposing any changes to the conditions for re-opening their markets, only the mechanism for doing so. The new automated procedures would automatically resume trading after one second has passed following the Exchanges’ receipt of the first NBBO following the resumption of trading after the halt, suspension, or pause. This change would allow each Exchange to avoid the need for its staff to monitor for resumption messages, and would allow members’ orders to be automatically reflected in the market, while

continuing to ensure that the Exchanges’ re-opening is tied to the existence of a market in the security on one or more national securities exchanges.

If there is no available NBBO in the security, the proposed automated procedures would not resume trading on the Exchanges. However, each Exchange would retain the ability to manually resume trading at its discretion pursuant to an existing rule.¹⁰ Each Exchange also has proposed to amend the existing rule to specifically provide that that discretion exists only when a security has not otherwise been re-opened for trading on the Exchange pursuant to the new automated procedures. The Exchanges believe that modifying the rules in this manner would increase transparency by specifically identifying the times when this discretion is not relevant due to the fact that the Exchange has successfully re-opened the security using its automated procedures. The Exchanges have represented that these additional changes would not substantively modify the scope of the discretion provided under the existing rules.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹¹ In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act,¹² 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 foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

As noted above, the Exchanges have proposed to reconfigure their systems such that, when NYSE has halted, suspended, or paused trading in one of its listed securities and subsequently

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release Nos. 90421 (Nov. 13, 2020), 85 FR 73826 (Nov. 19, 2020) (SR–CboeBYX–2020–032); 90420 (Nov. 13, 2020), 85 FR 73832 (Nov. 19, 2020) (SR–CboeBZX–2020–083); 90419 (Nov. 13, 2020), 85 FR 73829 (Nov. 19, 2020) (SR–CboeEDGA–2020–029); 90422 (Nov. 13, 2020), 85 FR 73816 (Nov. 19, 2020) (SR–CboeEDGX–2020–055). The proposed rule changes are nearly identical.

⁴ See CboeBYX Rule 1.5(ee); CboeBZX Rule 1.5(ee); CboeEDGA Rule 1.5(ii); CboeEDGX Rule 1.5(ii).

⁵ See CboeBYX Rule 1.5(r); CboeBZX Rule 1.5(r); CboeEDGA Rule 1.5(s); CboeEDGX Rule 1.5(s).

⁶ See CboeBYX Rule 1.5(c); CboeBZX Rule 1.5(c); CboeEDGA Rule 1.5(r); CboeEDGX Rule 1.5(r).

⁷ If NYSE lifts the halt, suspension, or pause in one of its listed securities during regular trading hours, existing rules of the Exchanges—which the Exchanges are not proposing to change—would apply. See CboeBYX Rule 11.23(e)(1); CboeBZX Rule 11.24(e)(1); CboeEDGA Rule 11.7(e)(1); CboeEDGX Rule 11.7(e)(1).

⁸ See CboeBYX Rule 11.23(e)(2); CboeBZX Rule 11.24(e)(2); CboeEDGA Rule 11.7(e)(2); CboeEDGX Rule 11.7(e)(2).

⁹ See Email from Adrian Griffiths, Assistant General Counsel, Cboe Global Markets, to Michael Gaw, Kathleen Gross, and Marlene Olsen, Division of Trading and Markets, Commission (Dec. 14, 2020).

¹⁰ See CboeBYX Rule 11.23(e)(2); CboeBZX Rule 11.24(e)(2); CboeEDGA Rule 11.7(e)(2); CboeEDGX Rule 11.7(e)(2) (providing that, where neither of the conditions required for re-opening has occurred, the security may be opened for trading at the discretion of the Exchange).

¹¹ In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹² 15 U.S.C. 78f(b)(5).

lifts the halt, suspension, or pause during an extra-hours session, the Exchanges would re-open their markets in that security automatically when the two aforementioned conditions are met, thereby eliminating the need for manual intervention. The Exchanges have narrowly tailored this new automated process to be invoked only when both conditions are met. The Exchanges have stated that, currently, Exchange personnel would confirm that the security is no longer halted and identify that there are quotes in the security available on other exchanges, and that the Exchanges believe that an automated process would be more consistent and reliable. By setting forth a clear, rules-based approach to re-opening trading in a narrow set of circumstances, the proposals are reasonably designed to increase the consistency and efficiency of the re-opening process in these circumstances. Therefore, the Commission finds that the proposals are consistent with the Act. As noted above, the Commission received no comments opposing the proposed rule changes.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule changes (SR-CboeBYX-2020-032, SR-CboeBZX-2020-083, SR-CboeEDGA-2020-029, and SR-CboeEDGX-2020-055) be, and hereby are, approved.

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

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90807; File No. SR-NYSEArca-2020-114]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reflect a Change in the Time of Calculation and Publication of the Wilshire Gold Index Applicable to Shares of the Wilshire wShares Enhanced Gold Trust

December 28, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934

(“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on December 21, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to reflect a change in the time of calculation and publication of the Wilshire Gold Index applicable to shares of the Wilshire wShares Enhanced Gold Trust (“Trust”). Shares of the Trust have been approved by the Commission for listing and trading on the Exchange under NYSE Arca Rule 8.201-E.⁴ The Trust’s shares have not commenced trading on the Exchange. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Commission has approved a proposed rule change relating to listing and trading on the Exchange of shares (“Shares”) of the Wilshire wShares Enhanced Gold Trust (“Trust”) for listing and trading on the Exchange under NYSE Arca Rule 8.201-E (“Commodity-Based Trust Shares”).⁵

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See note 5, *infra*.

⁵ See Securities Exchange Act Release No. 90216 (October 16, 2020), 85 FR 67401 (October 22, 2020) (SR-NYSEArca-2020-59) (Notice of Filing of

The Exchange proposes to reflect a change in the time of calculation and publication of the Wilshire Gold Index (“Index”) applicable to Shares of the Trust. The Trust’s Shares have not commenced trading on the Exchange.⁶

According to the Registration Statement and the Prior Order, the investment objective of the Trust is for the Shares to closely reflect the Index, which will be published by Solactive AG (the Index Calculation Agent), less the Trust’s liabilities and expenses. The Trust will have no assets other than (a) physical gold bullion (“Physical Gold”) in proportions that seek to closely replicate the Index and (b) cash.

The Prior Order stated that the Index value using the London Bullion Market Association (“LBMA”) Gold Price PM⁷ will be calculated and published daily each business day at approximately 5:00 p.m. (Eastern time (“E.T.”)) on the Trust’s website. The Exchange proposes to change this representation to state that the Index value using the LBMA Gold Price PM will be calculated and published daily each business day by approximately 7:00 p.m. E.T. on the Trust’s website. The revised time is being proposed as a result of certain contractual licensing restrictions which prevents the publication of the Index value prior to 7:00 p.m. E.T.

The Exchange believes that modifying the representation regarding when the Index value using the LBMA Gold Price PM is published to reflect that such Index value would be published each business day by approximately 7:00 p.m. E.T. would have no impact on the Trust’s shareholders. During the proposed two hour extension from approximately 5:00 p.m. E.T. to approximately 7:00 p.m. E.T., the value of the Trust’s holdings and net asset value (“NAV”) will be available, which will provide investors and authorized participants (“APs”) with a basis to determine whether Shares during the

Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Arca Rule 8.201-E (Commodity-Based Trust Shares) and To Permit the Listing and Trading of Shares of the Wilshire wShares Enhanced Gold Trust Under Amended NYSE Arca Rule 8.201-E (“Prior Order”).

⁶ On November 18, 2020 the Trust filed with the Commission an amended registration statement on Form S-1 under the Securities Act of 1933 relating to the Trust (File No. 333-235913) (“Registration Statement”). The description of the operation of the Trust herein is based, in part, on the Prior Order. The procedures described in this proposed rule change will not be implemented until this proposed rule change is effective and operative.

⁷ As stated in the Prior Order, the LBMA Gold Price PM is the price of Physical Gold obtained from auctions conducted in the afternoon (London time) by ICE Benchmark Administration (“IBA”), a benchmark administrator appointed by the LBMA.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).