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 read 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-ChoeBYX—2021–006 and should be submitted on or before April 1, 2021.

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

J. Matthew DeLesDernier, Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the STX ESG Large Cap Core ETF Under NYSE Arca Rule 8.601–E

March 5, 2021.

I. Introduction

On November 30, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) 3 and Rule 19b–4 thereunder, 2 a proposed rule change to list and trade shares (“Shares”) of STX ESG Large Cap Core ETF (“Fund”) under NYSE Arca Rule 8.601–E (Active Proxy Portfolio Shares). The proposed rule change was published for comment in the Federal Register on December 21, 2020. 3 On January 22, 2021, pursuant to Section 19(b)(2) of the Act, 4 the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change. 5 On January 22, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. 6 On March 4, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1. 7 The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 2

NYSE Arca Rule 8.900–E(b)(1) requires the Exchange to file separate proposals under Section 19(b)(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange; thus, the Exchange submitted this proposal to list and trade the Shares. 9 The Shares of the Fund will be issued by The RBB Fund, Inc. (“Issuer”), a corporation organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company. 10 Red Gate Advisers, LLC (“Adviser”) will be the investment adviser to the Fund. Stance Capital, LLC and Vident Investment Advisory, LLC will be the sub-advisers (“Sub-Advisers”) for the Fund. U.S. Bank, N.A. will serve as the Fund’s custodian, U.S. Bancorp Fund Services, LLC will serve as the Fund’s transfer agent, and Vigilant Distributors, LLC will act as the distributor and principal underwriter for the Fund.

3 As defined in Rule 8.601–E(c)(1), the term “Active Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day. Rule 8.601–E(c)(2) provides that the term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.

9 As defined in Rule 8.601–E(c)(1), the term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company ("Investment Company") registered under the Investment Company Act of 1940 ("1940 Act") 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; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 8.601–E(c)(2) provides that the term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day. Rule 8.601–E(c)(3) provides that the term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.
A. Description of the Fund

The Exchange states that the Fund’s holdings will conform to the permissible investments as set forth in the Application and Exemptive Order, and the holdings will be consistent with all requirements in the Application and Exemptive Order.11

According to the Exchange, the Fund’s investment objective is to seek long-term capital appreciation. The Exchange states that the Fund will invest, under normal circumstances, at least 80% of the value of its net assets (plus the amount of any borrowings for investment purposes) in exchange-traded equity securities of U.S. large capitalization issuers that meet environmental, social, and governance standards, as determined by Stance Capital, LLC.

B. Investment Restrictions

The Exchange states that the Shares of the Fund will conform to the initial and continued listing criteria under Rule 8.601–E. The Fund’s holdings will be consistent with all requirements in the Application and Exemptive Order. According to the Exchange, the Fund’s investments, including derivatives, will be consistent with its investment objective and will not be used to enhance leverage (although certain derivatives and other investments may result in leverage). That is, the Fund’s investments will not be used to seek performance that is the multiple or inverse multiple (e.g., 2X or −3X) of the Fund’s primary broad-based securities benchmark index (as defined in Form N–1A).12

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and rules and regulations thereunder applicable to a national securities exchange.13 In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,14 which requires, among other things, that the Exchange’s rules 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.

The Commission believes that the proposal is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of certain pricing transparency cannot be assured. As such, the Commission believes the proposal is reasonably designed to maintain a fair and orderly market for trading the Shares. The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress’s finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Specifically, the Commission notes that the Exchange, prior to commencement of trading in the Shares, will obtain a representation from the Issuer that the NAV per Share will be calculated daily and that the NAV, Portfolio Reference Basket,15 and Actual Portfolio for the Fund will be made available to all market participants at the same time.16 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. The Exchange states that quotation and last sale information for the Shares and U.S. exchange-traded instruments (excluding futures contracts) will be available via the Consolidated Tape Association (“CTA”) high-speed line, from the exchanges on which such securities trade, or through major market data vendors or subscription services. Intraday pricing information for all exchange-traded instruments, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they trade or through major market data vendors or subscription services. Intraday pricing information for cash equivalents is available through major market data vendors, subscription services, and/or pricing services. The Fund’s website will include additional information updated on a daily basis, including, on a per Share basis for the Fund, the prior business day’s NAV, 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 Guardrail Amount,17 which is the maximum deviation between the weightings of the specific securities in the Portfolio Reference Basket and the weightings of those specific securities in the Actual Portfolio, and any other information regarding premiums and discounts and the bid/ask spread for the Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act. The identity and quantity of investments in the Portfolio Reference Basket will be publicly available on the Fund’s website before the commencement of trading in Shares on each Business Day and the Fund’s website will disclose the information required under Rule 8.601–E(c)(3).18 The website and information will be publicly available at no charge.

The Commission also notes that the Exchange’s rules regarding trading halts help to ensure the maintenance of fair and orderly markets for the Shares. Specifically, pursuant to its rules, the Exchange may consider many factors in exercising its discretion to halt trading in the Shares and will halt trading in the Shares under the conditions specified in NYSE Arca Rules

11 Pursuant to the Application and Exemptive Order, the permissible investments for the Fund include only the following instruments: ETFs traded on a U.S. exchange, exchange-traded notes (“ETNs”) traded on a U.S. exchange, U.S. exchange-traded common stocks, U.S. exchange-traded preferred stocks, U.S. exchange-traded American Depositary Receipts (“ADRs”), U.S. exchange-traded real estate investment trusts, U.S. exchange-traded commodity pools, U.S. exchange-traded metals trusts, U.S. exchange-traded currency trusts, and U.S. exchange-traded futures; common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Fund’s Shares; exchange-traded futures that are traded on a U.S. futures exchange contemporaneously with the Fund’s Shares; and cash and cash equivalents (which are short-term U.S. Treasury securities, government money market funds, and repurchase agreements). According to the Exchange, the Fund will not borrow for investment purposes, hold short positions, or purchase any securities that are illiquid investments at the time of purchase.

12 The Fund’s broad-based securities benchmark index will be identified in a future amendment to its Registration Statement following the Fund’s first full calendar year of performance.

13 The Exchange states that the “Portfolio Reference Basket” is the Proxy Portfolio for purposes of Rule 8.601–E(c)(3). See Amendment No. 2, supra note 7, at n. 9.


15 See Amendment No. 2, supra note 7, at 9.

16 See Rule 8.601–E(c)(3), which requires that the website for each series of Active Prox Portfolio Shares shall disclose the information regarding the Proxy Portfolio as provided in the exemptive relief pursuant to the 1940 Act applicable to such series, including the following, to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) description of holding; (iv) quantity of each security or other asset held; and (v) percentage weighting of the holding in the portfolio.

17 See Amendment No. 2, supra note 7, at 9.


20 The Exchange states that “Portfolio Reference Basket” is the Proxy Portfolio for purposes of Rule 8.601–E(c)(3). See Amendment No. 2, supra note 7, at n. 9.

7.12–E. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, including (1) the extent to which trading is not occurring in the securities and/or the financial instruments composing the Proxy Portfolio and/or Actual Portfolio; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.19 Trading in the Shares also will be subject to NYSE Arca Rule 8.601–E(d)(2)(ID), which sets forth additional circumstances under which trading in the Shares will be halted.

The Commission also believes that the proposal is reasonably designed to help prevent fraudulent and manipulative acts and practices. Specifically, the Exchange provides 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 affiliate regarding access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio. The Sub-Advisers are not registered as broker-dealers and are not affiliated with a broker-dealer;
- Any person related to the Adviser, Sub-Adviser(s), or the Fund who makes decisions pertaining to the Fund’s Actual Portfolio or Proxy Portfolio or who has access to non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto are subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto;
- In the event (a) the Adviser or Sub-Adviser(s) 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 of and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto; and
- Any person or entity, including any service provider for the Fund, who has access to non-public information regarding the Fund’s Actual Portfolio or the Proxy Portfolio or changes thereto will be subject to procedures reasonably designed to prevent the use and dissemination of material non-public information regarding the Fund’s Actual Portfolio and/or Proxy Portfolio or changes thereto, and if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity has erected and will maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition of and/or changes to the Fund’s Actual Portfolio and/or Proxy Portfolio.

Finally, the Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Exchange, as well as cross-market surveillances administered by FINRA on behalf of the Exchange,20 and that these surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange’s existing rules governing the trading of equity securities.

In support of this proposal, the Exchange represents also that: 21

1. The Shares will conform to the initial and continued listing criteria under NYSE Arca Rule 8.601–E.
2. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange.
3. The Exchange, on behalf of the Exchange, or both, will communicate as needed, and may obtain information, regarding trading in the Shares and underlying exchange-traded instruments with other markets and other entities that are members of the Intermarket Surveillance Group (“ISG”). In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded instruments from markets and other entities with which the Exchange has in place a comprehensive surveillance sharing agreement. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the ISG or with which the Exchange has in

[20] See NYSE Arca Rule 8.601–E, Commentary .03, which requires, as part of the surveillance procedures for Active Portfolio Proxy Shares, the Fund’s holdings of common stocks held with the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily Actual Portfolio holdings of the Fund.
[23] The Commission notes that certain proposals for the listing and trading of exchange-traded products include a representation that the exchange will “surveil” for compliance with the continued listing requirements. See, e.g., Securities Exchange Act Release No. 77499 (April 1, 2016), 81 FR 20428, 20432 (April 7, 2016) (SR–BATS–2016–04). In the context of this representation, it is the Commission’s view that “monitor” and “surveil” both mean ongoing oversight of compliance with the continued listing requirements. Therefore, the Commission does not view “monitor” as a more or less stringent obligation than “surveil” with respect to the continued listing requirements.
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self-regulatory organizations; cboe EDGA exchange, inc.; notice of filing and immediate effectiveness of a proposed rule change to amend rule 11.11 (routIng to away trading centers), as well as its fee schedule, to delete references to the inet and rDOx routIng options and to delete all references to the c–lnk routIng and connectivity option from its fee schedule

March 5, 2021.
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 March 1, 2021, 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 act3 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”) proposes to amend rules [sic] 11.11 (Routing to Away Trading Centers), as well as its Fee Schedule, to delete references to the INET and RDOX routing options. Additionally, the Exchange proposes to delete all references to the C–LNK routing and connectivity option from the Exchange’s Fee Schedule. 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 amend paragraphs (4) and (6) under Exchange Rule 11.11(g) and 11.11(a) to delete all references to the INET and RDOX routing options. The Exchange also proposes to delete all references to the INET routing option from the EDGA Fee Schedule, as provided in fee codes 2 and L. Additionally, the Exchange proposes to delete the C–LNK routing and connectivity option from the Fee Schedule. The Exchange intends to implement the proposed rule changes on March 1, 2021.

Exchange Rule 11.11(g) provides for various routing options available on the Exchange. Specifically, Rule 11.11(g)(5) provides for the INET routing option, under which an order checks the System for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on the Nasdaq book, unless otherwise instructed by the User.6 Similarly, Exchange Rule 11.11(g)(6) provides for the RDOX routing option, under which an order checks the System for available shares and then is sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they are posted on the NYSE book, unless otherwise instructed by the User.

The Exchange has determined because few Users select the INET or RDOX routing options, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the product. Therefore, the Exchange now proposes to delete INET and RDOX as a routing option as provided by Rule 11.11(g)(4) and (6), respectively.

Given the proposed changes described above, the Exchange also proposes to amend Rules 11.11(a) and 11.11(g)(14) to eliminate any reference to the INET and RDOX routing strategies. Specifically, Rule 11.11(a) provides that unless a User selects the Post to Away, RDOT, RDOX, or INET routing option, an order that includes a Short Sale instruction when a Short Sale Circuit Breaker pursuant to Rule 201 of Regulation SHO is in effect is not eligible for routing by the Exchange. Alternatively, Rule 11.11(g)(14) provides for the Post to Away routing option, which routes the remainder of a routed order to and posts such order on the order book of a destination on the System routing table7 as specified by the User, and lists the specific routing options for which the Post to Away routing option may be combined. Both INET and RDOX are listed under Rule 11.11(g)(14) as routing options that may be combined with the Post to Away routing option. Based on the proposal to eliminate INET and RDOX from Exchange Rules, the Exchange is proposing to eliminating [sic] all such

5 The term “System” shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Exchange Rule 1.5(c).
6 The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 1.3. See Exchange Rule 1.5(e).
7 The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Exchange Rule 11.11(g).