

Five of these rule changes went into effect without being suspended. These rule changes, among other things, instituted or raised port fees. The Remand Order maintains the status quo and allows BOX to continue charging any of these fees still in force as it conducts proceedings on remand. It was only in the sixth instance that the Commission suspended the proposed rule changes and instituted proceedings. BOX has not been singled out for disparate treatment.<sup>134</sup>

#### IV. Conclusion

For the reasons set forth above, the Commission does not find that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, Sections 6(b)(4), 6(b)(5), and 6(b)(8) of the Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>135</sup> that the proposed rule changes (SR-BOX-2018-24, SR-BOX-2018-37, and SR-BOX-2019-04) be, and hereby are, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>136</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85474; File No. SR-CboeBZX-2019-019]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Make Certain Changes to the Listing Rule Governing the Listing and Trading of the Shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund of the WisdomTree in Order for Such Funds To Be Listed and Traded on the Exchange Under Rule 14.11(i) (“Managed Fund Shares”)

March 29, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 15, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to make certain changes to the listing rule governing the listing and trading of the shares of the WisdomTree Japan Multifactor Fund and the WisdomTree Europe Multifactor Fund of the WisdomTree in order for [these] Funds to be listed and traded on the Exchange under Rule 14.11(i) (“Managed Fund Shares”).

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), 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 the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The shares of the Funds (the “Shares”) are currently listed and traded on the Exchange pursuant to the generic listing standards under Rule 14.11(c), which governs the listing and trading of Index Fund Shares on the Exchange. The Exchange is proposing to continue listing and trading the Shares on the Exchange with certain changes to each Fund’s potential holdings, but under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(v).

The Shares are offered by the WisdomTree Trust, which was established as a Delaware statutory trust on December 15, 2005. WisdomTree Asset Management, Inc. (the “Adviser”) acts as adviser to the Funds. Mellon Investments Corporation acts as sub-adviser (the “Sub-Adviser”) to the Funds. The Trust is registered with the Commission as an investment company and has filed two Form 497 Supplements to its registration statement on Form N-1A (“Registration Statement”) with the Commission on behalf of the Funds outlining the changes described herein.<sup>5</sup>

Exchange Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the

2018)); SR-BOX-2018-15 (challenged by File No. 3-18525 (filed May 31, 2018)); SR-BOX-2017-31 (challenged by 3-18286 (filed Nov. 17, 2017)); SR-BOX-2016-40 (challenged by File No. 3-17663 (filed Nov. 8, 2016)); SR-BOX-2015-39 (challenged by File No. 3-17040 (filed Jan. 8, 2016)).

<sup>134</sup> The Commission notes that BOX 2 and BOX 3 were both filed after the Remand Order and therefore are not subject to the Remand Order.

<sup>135</sup> 15 U.S.C. 78s(b)(2).

<sup>136</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> See Registration Statement for the Trust (File Nos. 333-132380 811-21864) and Form 497 Supplements dated January 18, 2019. The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement.

broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>6</sup> In addition, Exchange Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Exchange Rule 14.11(i)(7) is similar to Exchange Rule 14.11(b)(5)(A)(i) (which applies to index-based funds); however, Exchange Rule 14.11(i)(7) in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not a registered broker-dealer and is not affiliated with any broker-dealers that are in the business of buying or selling securities. The Sub-Adviser is affiliated with multiple broker-dealers and has implemented and will maintain a "fire wall" with respect to such broker-dealers and their personnel regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such Fund's portfolio. In the event that (a) the Adviser or the Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a

<sup>6</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the "Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

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 such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Exchange submits this proposal in order to allow the Funds to hold OTC currency swaps in a manner that does not comply with Exchange Rule 14.11(i)(4)(C)(v).<sup>7</sup> Otherwise, the Funds will comply with all other listing requirements on an initial and continued listing basis under Exchange Rule 14.11(i) for Managed Fund Shares (the "Generic Listing Standards").

#### WisdomTree Japan Multifactor Fund

As amended in the applicable Form 497 Supplement, the Japan Fund will seek income and capital appreciation. The Japan Fund will be actively managed using a model-based approach and will seek to achieve its investment objective by investing primarily in Japanese equity securities that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser will seek to identify equity securities that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser will employ a quantitative model to identify which securities the Japan Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Japan Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Japan Fund may vary.

The Adviser will seek to manage the Japan Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the Japanese yen against the U.S. dollar (the "Japan Currency Hedge"), ranging from

<sup>7</sup> In particular, the Funds may not meet the requirement under Exchange Rule 14.11(i)(4)(C)(v) that the aggregate gross notional value of OTC derivatives shall not exceed 20% of the weight of the portfolio (including gross notional exposures).

a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under Normal Market Conditions,<sup>8</sup> the Japan Fund will hold only the following instruments: Non-U.S. Component Stocks,<sup>9</sup> American Depositary Receipts ("ADRs"), U.S. exchange-listed ETFs,<sup>10</sup> cash and Cash Equivalents,<sup>11</sup> and OTC currency swaps. As noted above, all of the Japan Fund's holdings will meet the Generic Listing Standards with the exception of its holdings in OTC currency swaps, which may not meet the requirement under Rule 14.11(i)(4)(C)(v) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

<sup>8</sup> The term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In response to adverse market, economic, political, or other conditions, the Fund reserves the right to invest in U.S. government securities, other money market instruments (as defined below), and cash, without limitation, as determined by the Adviser or Sub-Adviser. In the event the Fund engages in these temporary defensive strategies that are inconsistent with its investment strategies, the Fund's ability to achieve its investment objectives may be limited.

<sup>9</sup> As defined in Rule 14.11(c)(1)(E), the term "Non-U.S. Component Stock" shall mean an equity security that (a) is not registered under Sections 12(b) or 12(g) of the Act, (b) is issued by an entity that is not organized, domiciled or incorporated in the United States, and (c) is issued by an entity that is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

<sup>10</sup> For purposes of this filing the term ETF shall mean Portfolio Depository Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), and Managed Fund Shares as defined in Rule 14.11(i), or the equivalent product type on other national securities exchanges. With respect to Index Fund Shares, the underlying index shall be referred to herein as an "Index."

<sup>11</sup> As defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months that are: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

### WisdomTree Europe Multifactor Fund

As amended in the applicable Form 497 Supplement, the Europe Fund will seek income and capital appreciation. The Europe Fund will be actively managed using a model-based approach and will seek to achieve its investment objective by investing primarily in European equity securities that exhibit certain characteristics that the Adviser believes to be indicative of positive future returns based on a model developed by the Adviser. The Adviser will seek to identify equity securities that have the highest potential for returns based on proprietary measures of fundamental factors, such as value and quality, and technical factors, such as momentum and correlation. The Adviser will employ a quantitative model to identify which securities the Europe Fund might purchase and sell and opportune times for purchases and sales. At a minimum, the Europe Fund's portfolio will be rebalanced quarterly according to the Adviser's quantitative model, although a more active approach may be taken depending on such factors as market conditions and investment opportunities, and the number of holdings in the Europe Fund may vary.

The Adviser will seek to manage the Europe Fund's currency risk by dynamically hedging currency fluctuations in the relative value of the euro against the U.S. dollar (collectively, with the Japan Currency Hedge, the "Currency Hedge"), ranging from a 0% to 100% hedge. The hedge ratios are adjusted as frequently as weekly utilizing signals such as interest rate differentials, momentum, and value.

Under Normal Market Conditions, the Europe Fund will hold only the following instruments: Non-U.S. Component Stocks, ADRs, U.S. exchange-listed ETFs, cash and Cash Equivalents, and OTC currency swaps. As noted above, the Europe Fund's holdings will meet the Generic Listing Standards with the exception of its holdings in OTC currency swaps, which may not meet the requirement under Rule 14.11(i)(4)(C)(v) that prevents the aggregate gross notional value of OTC derivatives from exceeding 20% of the weight of the portfolio (including gross notional exposures).

The Trust is required to comply with Rule 10A-3 under the Act<sup>12</sup> for the initial and continued listing of the Shares of each Fund. In addition, the Exchange represents that the Shares of each Fund will meet and be subject to all other requirements of the Generic

Listing Rules and continued listing requirements for Managed Fund Shares under Exchange Rule 14.11(i), including those requirements regarding the Disclosed Portfolio (as defined in the Exchange rules) and the requirement that the Disclosed Portfolio and the net asset value ("NAV") will be made available to all market participants at the same time,<sup>13</sup> intraday indicative value,<sup>14</sup> suspension of trading or removal,<sup>15</sup> trading halts,<sup>16</sup> disclosure,<sup>17</sup> firewalls,<sup>18</sup> and surveillance.<sup>19</sup> All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

### Precedent and Policy Discussion

As described above, the Funds meet all of the Generic Listing Standards except as it may relate to their holdings in OTC currency swaps, which would be used to achieve their respective Currency Hedge. The Exchange believes that this proposal does not raise any substantive issues for the Commission to review because there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund Shares that employ nearly identical or substantially similar hedging strategies,<sup>20</sup> especially

<sup>13</sup> See Exchange Rules 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

<sup>14</sup> See Exchange Rule 14.11(i)(4)(B)(i).

<sup>15</sup> See Exchange Rule 14.11(i)(4)(B)(iii).

<sup>16</sup> See Exchange Rule 14.11(i)(4)(B)(iv).

<sup>17</sup> See Exchange Rule 14.11(i)(6).

<sup>18</sup> See Exchange Rule 14.11(i)(7).

<sup>19</sup> See Exchange Rules 14.11(i)(2)(C).

<sup>20</sup> See Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR-CboeBZX-2018-019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the "Hedged ADR Approval Order"); 84818 (December 13, 2018), 83 FR 65189 (December 19,

when compared to the Hedged ADR Approval Order. Specifically, the Hedged ADR Approval Order approved the listing and trading of eighteen series of Managed Fund Shares (the "Hedged ADR Funds"), each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC currency swaps used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration<sup>21</sup> and diversity<sup>22</sup> requirements related to their respective equity holdings. Stated another way, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments, but do not require the additional relief from the equity holdings portion of the Generic Listing Standards that was necessary for the Hedged ADR Funds to list and trade.

Further, the Exchange believes that, while the portfolios of the Funds might not meet Rule 14.11(i)(4)(C)(v), the policy issues that the rule is intended to address are otherwise mitigated by the structure and purpose of the Currency Hedge within the Funds.<sup>23</sup> Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Funds would use OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. While the Currency Hedge

(2018) (SR-NYSEArca-2018-75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR-BatsBZX-2017-54) (the "Inflation Hedged Fund") (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund's portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR-CboeBZX-2018-036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund's gross notional value).

<sup>21</sup> See Rule 14.11(i)(4)(C)(i)(a)(3).

<sup>22</sup> See Rule 14.11(i)(4)(C)(i)(a)(4).

<sup>23</sup> Each Fund expects to invest in excess of 80% of its net assets in Non-U.S. Component Stocks in a manner that will comply with the Generic Listing Standards.

<sup>12</sup> 17 CFR 240.10A-3.

positions taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge.<sup>24</sup> The Funds will attempt to limit counterparty risk in OTC currency swaps by: (i) Entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

#### Availability of Information

As noted above, the Funds will each comply with the requirements for Managed Fund Shares related to Disclosed Portfolio, Net Asset Value, and the Intraday Indicative Value. Additionally, the intra-day, closing and settlement prices of Non-U.S. Component Stocks, ADRs, and ETFs will be readily available from the securities exchanges on which such securities are traded, as well as published or other public sources, or online information services such as Bloomberg or Reuters. Intraday price quotations on OTC currency swaps are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay or in real-time for a paid fee. Price information for cash equivalents will be available from major market data vendors. Each Fund's Disclosed Portfolio will be available on the issuer's website ([www.WisdomTree.com](http://www.WisdomTree.com)) free of charge. Each Fund's website will include the prospectus for the applicable Fund and additional information related to NAV and other applicable quantitative information. Information regarding market price and trading volume of the Shares will be continuously available throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume for the Shares will be published daily in the financial section of newspapers. Trading in the Shares may be halted for market conditions or for

<sup>24</sup> Based on statistics reported by the Bank for International Settlements, there is significant liquidity in the spot market for the euro and the Japanese yen. See "Turnover of OTC foreign exchange instruments, by currency" available at <https://stats.bis.org/statx/srs/table/d11.3>.

reasons that, in the view of the Exchange, make trading inadvisable. 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. The Exchange has appropriate rules to facilitate trading in the shares during all trading sessions.

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Funds through the Exchange will continue to be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. The issuer has represented 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 Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting proceedings under Rule 14.12. The Exchange may obtain information regarding trading in the Funds, ADRs, ETFs, and certain of the Non-U.S. Component Stocks that are held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>25</sup> in general and Section 6(b)(5) of the Act<sup>26</sup> in particular in that it is 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. Specifically, the Exchange believes that the proposal is

<sup>25</sup> 15 U.S.C. 78f.

<sup>26</sup> 15 U.S.C. 78f(b)(5).

consistent with Rule 6(b)(5) of the Act in that is designed to prevent fraudulent and manipulative acts and practices because the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address, specifically Rule 14.11(i)(4)(C)(v) related to OTC derivatives holdings, are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. Specifically, the Exchange believes that the policy issues that Rule 14.11(i)(4)(C)(v) is intended to address are mitigated by the way that the Funds would use OTC currency swaps. The rule is intended to mitigate concerns around the manipulability of a particular underlying reference asset or derivatives contract and to minimize counterparty risk. As noted above, while the Currency Hedge positions that might be taken by the Funds may not meet the Generic Listing Standards related to OTC derivatives holdings, the policy concerns about limiting exposure to potentially manipulable underlying reference assets that the Generic Listing Standards are intended to address are otherwise mitigated by the liquidity in the underlying spot currency market that prevents manipulation of the reference prices used by the Currency Hedge. The Funds will attempt to limit counterparty risk in OTC currency swaps by: (i) Entering into such contracts only with counterparties the Adviser and/or Sub-Adviser believes are creditworthy; (ii) limiting a Fund's exposure to each counterparty; and (iii) monitoring the creditworthiness of each counterparty and the Fund's exposure to each counterparty on an ongoing basis.

The Exchange also notes that there are numerous instances in which the Commission has approved the listing and trading of series of Managed Fund Shares that employ nearly identical or substantially similar hedging strategies.<sup>27</sup> Specifically, the Hedged

<sup>27</sup> See Securities Exchange Act Release Nos. 84143 (September 14, 2018), 83 FR 47659 (September 20, 2018) (SR-CboeBZX-2018-019) (order approving the listing and trading of eighteen series of Managed Fund Shares that allowed each series to hedge its foreign equity position with up to 50% gross notional exposure to OTC currency swaps) (the "Hedged ADR Approval Order"); 84818 (December 13, 2018), 83 FR 65189 (December 19, 2018) (SR-NYSEArca-2018-75) (order approving the listing and trading of a series of Managed Fund Shares that may hold up to 50% of the aggregate gross notional value of the fund's portfolio in OTC derivatives for the purpose of reducing currency, interest rate, credit, or duration risk, in addition to allowing the fund to hold an additional 20% of non-hedging OTC derivatives); 82591 (January 26, 2018) 83 FR 4707 (February 1, 2018) (SR-BatsBZX-

ADR Approval Order approved the listing and trading of eighteen series of Managed Fund Shares (the “Hedged ADR Funds”), each of which consisted of only two components: (i) A single ADR; and (ii) OTC currency swaps used to hedge against fluctuations in the exchange rate between the U.S. dollar and the local currency of the foreign security underlying the ADR. In addition to not meeting Rule 14.11(i)(4)(C)(v) related to the OTC currency swaps used to hedge currency exposure, each series of the Hedged ADR Funds also did not meet the concentration<sup>28</sup> and diversity<sup>29</sup> requirements related to their respective equity holdings. Stated another way, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments, but do not require the additional relief from the equity holdings portion of the Generic Listing Standards that was necessary for the Hedged ADR Funds to list and trade.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Funds through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Funds. The Trust, on behalf of the Funds, has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for

2017–54) (the “Inflation Hedged Fund”) (order approving the listing and trading of a series of Managed Fund Shares that could gain up to 50% gross notional exposure to OTC derivatives in order to hedge against inflation in the fund’s portfolio); and 83363 (June 1, 2018), 83 FR 26531 (June 7, 2018) (SR–ChoeBZX–2018–036) (notice of filing and immediate effectiveness of a proposal to allow the Inflation Hedged Fund to move increase its potential exposure to OTC derivative instruments from 50% to 60% of the fund’s gross notional value).

<sup>28</sup> See Rule 14.11(i)(4)(C)(i)(a)(3).

<sup>29</sup> See Rule 14.11(i)(4)(C)(i)(a)(4).

compliance with the continued listing requirements. If a Fund or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

As described above, all ADRs and ETFs will be listed on a U.S. national securities exchange, all of which are members of ISG or are exchanges with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>30</sup> The Exchange may obtain information regarding trading in the Funds, ADRs, ETFs, and certain Non-U.S. Component Stocks held by each Fund via the ISG, from other exchanges that are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Additionally, the Exchange or FINRA, on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to TRACE.

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. The Exchange notes that the proposed rule change will facilitate the listing and trading of additional series of Managed Fund Shares that will enhance competition among market participants, 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 has neither solicited nor received written comments on the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing 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

<sup>30</sup> For a list of the current members and affiliate members of ISG, see [www.isgportal.com](http://www.isgportal.com). The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>31</sup> and Rule 19b–4(f)(6) thereunder.<sup>32</sup>

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act<sup>33</sup> normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)<sup>34</sup> 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that there is no reason for delay because, as noted above, the Funds are proposing to implement a Currency Hedge using the same instruments as the Hedged ADR Funds with the same limits on such instruments and requiring the 30-day delay before the filing becomes operative will not further any underlying policy goals related to the protection of investors and the public interest. According to the Exchange, waiver of the 30-day operative delay would more quickly facilitate the Adviser’s ability to fully implement its Currency Hedge, which would enhance competition among market participants, to the benefit of investors and the marketplace. For those reasons, the Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest. The Commission believes that the proposal raises no new or substantive issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>35</sup>

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

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–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.

<sup>33</sup> 17 CFR 240.19b–4(f)(6).

<sup>34</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>35</sup> 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).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### 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:

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-019 on the subject line.

##### Paper Comments

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

All submissions should refer to File Number SR-CboeBZX-2019-019. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-CboeBZX-2019-019 and should be submitted on or before April 25, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

[FR Doc. 2019-06528 Filed 4-3-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85458; File No. SR-CBOE-2019-018]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Rule 6.42, Interpretation and Policy .04 To Specify That Replacement Issues May Be Added to the Penny Pilot Program ("Pilot") on a Quarterly Basis, Without Altering the Expiration Date of the Pilot, Which Is June 30, 2019

March 29, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 22, 2019, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") filed with the Securities and Exchange Commission (the "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<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend Rule 6.42, Interpretation and Policy .04 to specify that replacement issues may be added to the Penny Pilot Program ("Pilot") on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The text of the proposed rule change is provided below.

<sup>36</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

(additions are *italicized*; deletions are [bracketed])

\* \* \* \* \*

Rules of Cboe Exchange, Inc.

\* \* \* \* \*

Rule 6.42. Minimum Increments for Bids and Offers

(a)-(b) No change.

. . . *Interpretations and Policies:*

.01-.03 No change.

.04 The Exchange may replace any option class participating in the Penny Pilot Program that has been delisted with the next most actively traded, multiply listed option class, based on national average daily volume in the preceding six calendar months, that is not yet included in the Pilot Program. Any replacement class would be added on the second trading day *in the first month of each quarter* [following January 1, 2019]. The Penny Pilot will expire on June 30, 2019.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 Rule 6.42, Interpretation and Policy .04, regarding the Pilot, to specify that replacement issues may be added to the Pilot on a quarterly basis, without altering the expiration date of the Pilot, which is June 30, 2019. The Exchange recently filed to extend the Pilot until June 30, 2019 (from December 31, 2018) and also updated the rule text to provide that replacement issues may be added to the Pilot on the second trading day following January 1, 2019.<sup>5</sup> The

<sup>5</sup> See Securities Exchange Act Release No. 84940 (December 21, 2018), 83 FR 67759 (December 31,