be submitted on or before October 11, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20438 Filed 9–19–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33228; File No. 812–14875]

Exact Sciences Corporation

September 14, 2018.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under Section 3(b)(2) of the Investment Company Act of 1940 (''Act'').

Applicant: Exact Sciences Corporation.

Summary of Application: Applicant seeks an order under Section 3(b)(2) of the Act declaring it to be primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities. Applicant is in the business of producing and developing screening and diagnostic tests for the early detection and prevention of certain cancers.

Filing Dates: The application was filed on January 30, 2018 and amended on June 1, 2018, July 6, 2018 and August 24, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 2018 and should be accompanied by proof of service on Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicant, 441 Charmany Drive, Madison, Wisconsin 53719.

[16] 17 CFR 200.30–3(a)(12).

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, at (202) 551–6840, or Nadya B. Roytblat, Assistant Chief Counsel, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicant's Representations

1. Formed in 1995, Applicant is a Delaware corporation that is in the business of developing, clinical testing, marketing and commercializing cancer and pre-cancer screening and diagnostic tests. Applicant currently manufactures a non-invasive, patient-friendly screening test called Cologuard and provides it to patients on a prescription-only basis through its clinical laboratory. Applicant is also currently working on the development of additional tests for other types of cancers.

2. Applicant states that companies in the heathcare sector such as itself generally need significant liquid capital to finance their operations and meet high production, commercialization and regulatory costs. Such companies often spend a significant proportion of their revenues on research and development (''R&D'') in order to bring a product to market and to bring products through the Food and Drug Administration's (''FDA'') approval process.

3. Applicant states that it currently depends on raised capital to finance operations and continued growth but ultimately seeks to generate cash from its operations to support its business. Applicant states that it has successfully raised capital to finance its operations and commercialization of Cologuard in large part through various public offerings of its debt and equity securities. Applicant seeks to preserve its capital and maintain liquidity, pending the use of such capital to support its business operations, by investing in short-term investment grade and liquid fixed income and money market instruments that earn competitive market returns and provide a low level of credit risk (''Capital Preservation Investments''). Applicant also, to a limited extent, makes strategic investments in companies that are complementary to its core business. Applicant's board of directors oversees Applicant's investment practices and defines the parameters for investment activities. Applicant does not invest in securities for short-term speculative purposes.

Applicant's Legal Analysis

1. Applicant seeks an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities and therefore is not an investment company as defined in the Act.

2. Section 3(a)(l)(A) of the Act defines the term ''investment company'' to include an issuer that is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting or trading in securities. Section 3(a)(l)(C) of the Act further defines an investment company as an issuer that is engaged or proposes to engage in the business of investing, reinvesting, owning, holding or trading in securities, and owns or proposes to acquire investment securities having a value in excess of 40% of the value of the issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis. Section 3(a)(2) of the Act defines ''investment securities'' to include all securities except Government securities, securities issued by employees' securities companies, and securities issued by majority-owned subsidiaries of the owner which (a) are not investment companies and (b) are not relying on the exclusions from the definition of investment company in Section 3(c)(1) or Section 3(c)(7) of the Act. While Applicant states that it does not hold itself out as being engaged primarily in the business of investing, reinvesting or trading in securities, Applicant states that it consistently holds investment securities that exceed 40% of its total assets on an unconsolidated basis (exclusive of Government securities and cash items). Applicant states that it therefore falls within the definition of investment company under Section 3(a)(l)(C) of the Act.

3. Rule 3a–8 under the Act provides an exclusion from the definition of investment company if, among other factors, a company's R&D expenses are a substantial percentage of its total expenses for the last four fiscal quarters combined. While Applicant believes that it complies with the conditions of Rule 3a–8, Applicant is concerned that its R&D expenses, while substantial in absolute terms, may not be substantial as a ratio of overall expenses, particularly given the expense increase in connection with the commercialization of Cologuard. Applicant's R&D expenses as a ratio of

total expenses have declined from a high of 74% of total expenses in 2012 to approximately 11% of total expenses for year-end 2017 and 12% as of March 31, 2018. Applicant explains that since the FDA's approval of Cologuard, Applicant has devoted more resources to sales and marketing. Although Applicant's R&D expenses have generally increased or remained steady overtime, its overall expenses have disproportionately increased, causing a decline in the ratio of R&D expenses to overall expenses. While Applicant expects to increase funding for R&D for other products, it also expects to increase funding with respect to the commercialization of Cologuard. Thus, Applicant does not expect its additional funding for R&D to cause a significant increase in the ratio of R&D funding to overall expenses.

4. Section 3(b)(2) of the Act provides that, notwithstanding Section 3(a)(l)(C) of the Act, the Commission may issue an order declaring an issuer to be primarily engaged in a business other than that of investing, reinvesting, owning, holding, or trading in securities directly, through majority-owned subsidiaries, or controlled companies conducting similar types of businesses. Applicant requests an order under Section 3(b)(2) of the Act declaring that it is primarily engaged in a business other than that of investing, reinvesting, owning, holding or trading in securities, and therefore is not an investment company as defined in the Act.

5. In determining whether an issuer is ''primarily engaged'' in a non-investment company business under Section 3(b)(2) of the Act, the Commission considers the following factors: (a) The company's historical development, (b) its public representations of policy, (c) the activities of its officers and directors, (d) the nature of its present assets, and (e) the sources of its present income.[1]

6. Applicant submits that it satisfies the criteria for issuance of an order under Section 3(b)(2) of the Act because Applicant is primarily engaged in the business of developing, testing, marketing and commercializing cancer and pre-cancer diagnostic screening tests and not in the business of investing, reinvesting, owning, holding or trading in securities.

a. *Historical Development.* Applicant states that since its inception in 1995 it has operated in the healthcare sector to develop and commercialize cancer and pre-cancer screening and diagnostic tests. Applicant has focused its strategic opportunities in developing a screening test for colorectal cancer, culminating in the development of Cologuard, which received FDA approval in 2014. Since 2014, Applicant has been engaged in sales and marketing Cologuard and has begun research and development on testing related to other types of cancers. Applicant has nine wholly-owned subsidiaries, each of which is an operating company integrally related to Applicant's business. Applicant has never sold any of its subsidiaries since inception.

b. *Public Representations of Policy.* Applicant states it has never made any public representations that would indicate that it is in any business other than developing and commercializing cancer screening technologies. Applicant represents that it has never held and does not now hold itself out as an investment company within the meaning of the Act. Applicant states that all annual reports, web postings, press releases and written communications issued by Applicant have related to its business as a cancer screening and diagnostics company. Applicant further states that its public representations make clear that shareholders invest in the Applicant's securities with the expectation of realizing gains from Applicant's development and commercialization of cancer-screening and diagnostic technologies and not from returns on an investment portfolio. Applicant's only public representations regarding its investment securities are those required to be disclosed in public filings with the Commission.

c. *Activities of Officers and Directors.* Applicant represents that its board of directors and officers devote substantially all of their time managing Applicant's business as a cancer screening and diagnostics company. Applicant states that its management and corporate governance structure is comprised of professionals with expertise in technology, science, medicine, life science/biotechnology, and government. Applicant states that day-to-day management of the Capital Preservation Investments is handled by external asset managers consistent with investment guidelines adopted by the Applicant's board of directors on an annual basis. Applicant states that while the board of directors may review strategic investments in companies that are complementary to the Applicant's business, these reviews are made for long-term business, not speculative investment strategies. None of the members of management or the board of directors, even when reviewing strategic investments, spends or proposes to spend more than 1% of his or her time on any securities investment activities on behalf of the Applicant. They, along with the Applicant's approximately 1,268 full-time employees, are dedicated to the production and commercialization of Cologuard and the development of new cancer screening and diagnostic products.

d. *Nature of Assets.* Applicant states that as of March 31, 2018, Applicant's investment securities constituted approximately 79% of its total assets (excluding Government securities and cash items) on an unconsolidated basis.[2] Furthermore, more than 99% of its investment securities consisted of Capital Preservation Investments. Applicant's remaining investment securities consist of a strategic investment in a company whose business is complementary to the Applicant's business. Applicant anticipates that its investment securities other than Capital Preservation Investments will not exceed 10% of its total unconsolidated assets (excluding Government securities and cash items) in the future. Applicant uses current assets, including its Capital Preservation Investments, to finance its continued R&D program and operations in connection with the commercialization of Cologuard.

e. *Sources of Income and Revenue.* Applicant represents that since its inception it has had net operating losses. It does, however, derive income from its investment securities.

Applicant states that, particularly given its commercialization of Cologuard, a review of its current sources of revenues provides a more accurate picture of its operating company status. Applicant states that, for the year ended December 31, 2017, Applicant had approximately $266 million of revenues attributable to Cologuard. For the three months ended March 31, 2018, Cologuard revenues were approximately $90.3 million. In contrast, Applicant earned $3.9 million in net investment income in 2017, and $3.7 million for the three months ended March 31, 2018, all derived from Capital Preservation Investments.[3] Applicant states that if investment income were compared to its revenues from Cologuard, it would account for less than 2%. Applicant states it does not expect its net investment income to exceed 2% of its revenues over the long term.

[1] *Tonopah Mining Company of Nevada,* 26 SEC 426, 427 (1947).

[2] Applicant states that none of its subsidiaries owns investment securities.

[3] Applicant states that it has not, and does not expect to, earn investment income from its strategic investment.

7. Applicant asserts that its historical development, its public representations of policy, the activities of its officers and directors, the nature of its assets and its sources of income and revenue, as discussed in the application, demonstrate that it is engaged primarily in a business other than that of investing, reinvesting, owning, holding or trading securities. Applicant thus asserts that it satisfies the criteria for issuing an order under Section 3(b)(2) of the Act.

Applicant's Conditions

Applicant agrees that any order granted pursuant to the application will be subject to the following conditions:

1. Applicant will continue to allocate and use its accumulated cash and investment securities for bona fide business purposes; and

2. Applicant will refrain from investing or trading in securities for short-term speculative purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–20408 Filed 9–19–18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–84143; File No. SR–CboeBZX–2018–019]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To List and Trade Shares of Eighteen ADRPLUS Funds of the Precidian ETFs Trust Under Rule 14.11(i), Managed Fund Shares

September 14, 2018.

I. Introduction

On March 5, 2018, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of eighteen ADRPLUS Funds of the Precidian ETFs Trust (''Trust''), under Exchange Rule 14.11(i) (''Managed Fund Shares''). The proposed rule change was published for comment in the **Federal Register** on March 21, 2018.[3] On April 25, 2018, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] Also on April 25, 2018, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On May 17, 2018, the Exchange filed Amendment No. 2 to the proposed rule change.[6] On June 19, 2018, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On August 14, 2018, the Exchange filed Amendment No. 3 to the proposed rule change.[9] The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 3.

II. The Exchange's Description of the Proposal, as Modified by Amendment No. 3[10]

The Exchange proposes to list and trade the Shares under Exchange Rule 14.11(i), which governs the listing and trading of Managed Fund Shares. The Funds are a series of, and the Shares will be offered by, the Trust.[11] Precidian Funds LLC (''Adviser'') will serve as the investment adviser to the Funds.[12]

A. Description of the ADRPLUS Funds

According to the Exchange, each Fund seeks to provide investment results that correspond generally, before fees and expenses, to the price and yield performance of a particular American Depositary Receipt, hedged against

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 82881 (March 15, 2018), 83 FR 12449.

[4] *See* Securities Exchange Act Release No. 83102, 83 FR 19126 (May 1, 2018).

[5] Amendment No. 1, which amended and replaced the proposed rule change in its entirety, is available at: *https://www.sec.gov/comments/sr-cboebzx-2018-019/cboebzx2018019-3551361-162325.pdf.*

[6] Amendment No. 2, which amended and replaced the proposed rule change in its entirety, is available at: *https://www.sec.gov/comments/sr-cboebzx-2018-019/cboebzx2018019-3665011-162423.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 83467, 83 FR 29589 (June 25, 2018).

[9] In Amendment No. 3, which amended and replaced, in its entirety, the proposed rule change as modified by Amendment No. 2, the Exchange: (a) Specified that the derivatives in which the Funds may invest are over-the-counter (''OTC'') currency swaps; (b) corrected references to, and specified with greater particularity, the Exchange requirements the Funds would not meet; (c) deleted a representation that the Funds may not meet the requirement of Exchange Rule 14.11(i)(4)(C)(iv)(b) that the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures); (d) modified a trading halt representation to state that the Exchange will also halt trading in the Shares where a market-wide trading halt is declared in the associated Unhedged ADR (as defined herein) and that trading in the Shares will remain halted until trading in the Unhedged ADR resumes; (e) represented that Shares of the Funds would meet and be subject to Exchange Rule 14.11(i)(2)(C); (f) stated that each Fund expects to invest in excess of 95% of its net assets in the Unhedged ADRs, and each Fund expects that the gross notional value of the Currency Hedge (as defined herein) would be equal to the value of the Unhedged ADRs, which would be approximately 50% of the weight of the portfolio (including gross notional exposures); (g) addressed policy concerns related to the Currency Hedge held by the Funds in excess of the limit as provided in the Exchange Rule 14.11(i)(4)(C)(v); (h) modified a representation to state that the Exchange will suspend trading and commence delisting proceedings pursuant to Exchange Rule 14.12 for the Shares if the Unhedged ADR held by a Fund has been suspended from trading or delisted by the Unhedged ADR's listing exchange; (i) stated that the Exchange or Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, are able to access, as needed, trade information for certain fixed income instruments reported to the Trade Reporting and Compliance Engine (''TRACE''); (j) clarified a criterion regarding when an order to redeem creation units of a Fund would be deemed received by the distributor; (k) specified that the Information Circular (as discussed herein) will discuss how information regarding the Disclosed Portfolio (as defined in Exchange Rule 14.11(i)(3)(B)) is disseminated; and (l) made other non-substantive, technical, and clarifying corrections to the proposal. Because Amendment No. 3 clarifies the derivatives in which the Funds may invest, adds specificity to certain requirements, made additional representations, and otherwise does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues under the Act, Amendment No. 3 is not subject to notice and comment. Amendment No. 3 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboebzx-2018-019/cboebzx2018019-4290642-173190.pdf.*

[10] Additional information regarding the Funds, the Trust, and the Shares can be found in Amendment No. 3 and the Registration Statement. *See supra* note 9 and *infra* note 11.

[11] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). *See* Registration Statement on Form N–1A for the Trust, dated June 14, 2017 (File Nos. 333–171987 and 811–22524) (''Registration Statement''). In addition, the Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 32622 (May 2, 2017) (File No. 812–14584).

[12] The Exchange represents that the Adviser is not a registered broker-dealer and is not affiliated with a broker-dealer. In addition, 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 the Fund's portfolio. The Exchange states that in the event that (a) the Adviser becomes registered as a broker-dealer or 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 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.