

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90686; File No. SR–CboeBZX–2020–090]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule To List and Trade Shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF, Each a Series of the Invesco Actively Managed Exchange-Traded Fund Trust, Under Rule 14.11(m) (Tracking Fund Shares)

December 16, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on December 15, 2020, 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 Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to list and trade shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF pursuant to Rule 14.11(m), Tracking Fund Shares,³ which are securities issued by an actively managed open-end management investment company.⁴ The Exchange is submitting this proposal as required by

Rule 14.11(m)(2)(A), which provides that the Exchange must file separate proposals under Section 19(b) of the Act before listing and trading of a series of Tracking 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/), 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 list and trade shares of the Invesco Real Assets ESG ETF and the Invesco US Large Cap Core ESG ETF pursuant to Rule 14.11(m), Tracking Fund Shares,⁵ which are securities issued by an actively managed open-end management investment company.⁶ The Exchange is submitting this proposal as required by Rule 14.11(m)(2)(A), which provides that the Exchange must file separate

proposals under Section 19(b) of the Act before listing and trading of a series of Tracking Fund Shares.

The Shares will be offered by the Trust, which was organized as a Delaware statutory trust on November 6, 2007. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A with the Commission.⁷ Invesco Capital Management LLC (the “Adviser”) will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund’s portfolio and Tracking Basket.⁸ Personnel who make decisions on a Fund’s portfolio composition and/or Tracking Basket or who have access to nonpublic information regarding the Fund Portfolio⁹ and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding such portfolio and/or Tracking Basket. The Funds’ sub-adviser, Invesco Advisers, Inc. (the “Sub-Adviser”), is not registered as a broker-dealer but is affiliated with broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund’s Fund Portfolio and/or Tracking Basket or who have access to information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund’s portfolio and/or Tracking Basket.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁴ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

⁵ As defined in Rule 14.11(m)(3)(A), the term “Tracking Fund Share” means a security that: (i) Represents an interest in an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (the “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; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined Net Asset Value (“NAV”); (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined NAV; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁶ Rule 14.11(m) was approved along with the listing and trading of three series of Tracking Fund Shares by the Commission on May 15, 2020. See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (the “Tracking Fund Shares Approval Order”).

⁷ The Trust is registered under the 1940 Act. On September 25, 2020, the Trust filed post-effective amendments to its registration statement on Form N–1A relating to each Fund (File No. 811–22148) (the “Registration Statement”). The descriptions of the Funds and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust (the “Exemptive Order”) under the 1940 Act. See Investment Company Act of 1940 Release No. 34076 (October 27, 2020).

⁸ As defined in Rule 14.11(m)(3)(E), the term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the 1940 Act applicable to a series of Tracking Fund Shares.

⁹ As defined in Rule 14.11(m)(3)(B), the term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

In the event that (a) the Adviser or a 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 registered broker-dealer or becomes newly 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 Fund Portfolio and/or Tracking Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Tracking Basket. Any person or entity, including any service provider for the Funds, who has access to nonpublic information regarding a Fund Portfolio or Tracking Basket or changes thereto for a Fund or Funds will be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or Tracking Basket or changes thereto. Further, any such person or entity that is registered as a broker-dealer or affiliated with a broker-dealer, 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 and/or changes to such Fund Portfolio or Tracking Basket. 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 Shares will conform to the initial and continued listing criteria under Rule 14.11(m) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.¹⁰ A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time. Each Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage.

Invesco Real Assets ESG ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all

requirements in the Exemptive Relief.¹¹ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of the Intermarket Surveillance Group (“ISG”) ¹² or with which the Exchange has in place a comprehensive surveillance sharing agreement.

The Fund seeks capital appreciation as its investment objective with a secondary objective of current income. The Fund seeks to achieve its investment objective by investing primarily in exchange-traded equity securities of “real assets” companies (as identified below) located in North America that meet high environmental, social and governance (“ESG”) standards, as determined by the Sub-Adviser. Real assets are characterized by having physical attributes, including real estate, infrastructure, natural resources and timber. The Sub-Adviser considers “real assets” companies to be those that own, operate, or derive a significant portion of their value from real assets or the production thereof. In selecting equity securities for the Fund, the investment team uses fundamental analysis to identify securities that adhere to ESG principals described herein and are viewed to have relatively favorable long-term prospects. Some of the factors that the investment team considers include, but are not limited to: Assessment of long term fundamental growth, sustainable dividends, attractive physical and locational attributes and capital structure viability. As a result of the analysis, the investment team generally favors companies with a balanced mix of the factors above. The investment team will consider selling a security when it no longer meets the investment criteria, or a more attractive alternative is identified. The Fund may invest in companies of any market capitalization.

¹¹ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares (“foreign common stocks”), exchange-traded preferred stocks, exchange-traded American Depositary Receipts (“ADRs”), exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Invesco US Large Cap Core ESG ETF

The Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Relief and the holdings will be consistent with all requirements in the Exemptive Relief.¹³ Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.¹⁴

The Fund seeks capital appreciation as its investment objective. The Fund seeks to achieve its investment objective by investing, under Normal Market Conditions,¹⁵ at least 80% of its net assets (plus any borrowings for investment purposes) in exchange-traded equity securities of U.S. large capitalization issuers. Additionally, the Fund seeks to achieve its investment objective by investing mainly in common stock of U.S. companies that meet high ESG standards, as determined by the Sub-Adviser.

Trading Halts

Rule 14.11(m)(4)(B)(iv) provides that (a) the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the Tracking Basket or Fund Portfolio; or (ii) whether other unusual conditions or circumstances detrimental to the

¹³ Pursuant to the Exemptive Relief, the Fund’s permissible investments include only the following instruments: ETFs, exchange-traded notes, exchange-traded common stocks, foreign common stocks, exchange-traded preferred stocks, ADRs, exchange-traded real estate investment trusts, exchange-traded commodity pools, exchange-traded metals trusts, exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents. With the exception of foreign common stocks and cash and cash equivalents, all holdings of the Fund will be listed on a U.S. national securities exchange.

¹⁴ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that all components, except the cash and cash equivalent components, of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁵ As defined in Rule 14.11(m)(3)(D), the term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues (e.g., systems failure) causing dissemination of inaccurate market information; or force majeure type events such as natural or manmade disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

¹⁰ See 17 CFR 240.10A-3.

maintenance of a fair and orderly market are present; and (b) if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time: The net asset value, the Tracking Basket, or the Fund Portfolio with respect to a series of Tracking Fund Shares, then the Exchange will halt trading in such series until such time as the net asset value, the Tracking Basket, or the Fund Portfolio is available to all market participants, as applicable.

Trading Rules

The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.¹⁶ As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01. The Exchange has appropriate rules to facilitate trading in Tracking Fund Shares during all trading sessions.

Tracking Basket for the Proposed Funds

For the Funds, the Tracking Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs. The Exchange notes that the Tracking Basket methodology used by the Fund is substantively identical to a proposal previously approved by the Commission.¹⁷ ETFs selected for inclusion in the Tracking Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Tracking Basket without revealing a Fund's exact positions.¹⁸ Intraday pricing information for all constituents of the Tracking Basket that are exchange-

traded, which includes all eligible instruments except cash and cash equivalents, will be available on the exchanges on which they are traded and through subscription services. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services. The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Tracking Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Tracking Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Tracking Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Tracking Basket, as further described below.

The Tracking Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Tracking Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Tracking Basket as a hedge: Tracking error (standard deviation of return differentials between the Tracking Basket and the Fund), turnover cost, and basket creation cost.¹⁹ Typically, the Tracking Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Tracking Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Tracking Basket, the Adviser will consider various factors, including liquidity of the securities in the Tracking Basket, tracking error, and the cost to create and trade the Tracking Basket.²⁰ For

example, if the Adviser determines that a new Tracking Basket would reduce the variability of return differentials between the Tracking Basket and the Fund when balanced against the cost to trade the new Tracking Basket, rebalancing may be appropriate. The Adviser will periodically review the Tracking Basket parameters and Tracking Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. The Exchange notes that the concept of the Tracking Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

The Exchange believes that the particular instruments that may be included in each of the Fund's respective Fund Portfolio and Tracking Basket do not raise any concerns related to the Tracking Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares.²¹ In addition, each Fund's Tracking Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund.

The Adviser anticipates that the returns between a Fund and its respective Tracking Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Tracking Basket will be sufficiently small such that the Tracking Basket will provide authorized participants, arbitrageurs, and certain other market participants (collectively, "Market Makers") with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes

the Tracking Basket, *i.e.*, the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Tracking Basket, *i.e.*, the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Tracking Basket that is cost effective and liquid without compromising its tracking ability.

²¹ The Exchange notes that to the extent that the Fund Portfolio or Tracking Basket include any foreign common stocks, such securities will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

¹⁶ With respect to trading in Tracking Fund Shares, all of the BZX Member obligations relating to product description and prospectus delivery requirements will continue to apply in accordance with Exchange rules and federal securities laws, and the Exchange will continue to monitor its Members for compliance with such requirements.

¹⁷ See Tracking Fund Shares Approval Order.

¹⁸ The set of ETFs that are "representative" to be used in the Tracking Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Tracking Basket. ETFs may constitute no more than 50% of the Tracking Basket's assets.

¹⁹ Tracking error measures the deviations between the Tracking Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Tracking Basket as a hedge.

²⁰ The Adviser uses a trading cost model to develop estimates of costs to trade a new Tracking Basket. There are essentially two elements to this cost: (1) The cost to purchase securities constituting

that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Tracking Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²² in general and Section 6(b)(5) of the Act²³ 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.

The Exchange notes that a significant amount of information about each Fund and its Fund Portfolio will be publicly available at all times. Each Fund will disclose the Tracking Basket, which is designed to closely track the daily performance of the Fund Portfolio, on a daily basis. Each Fund will at a minimum publicly disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior business day's NAV and the closing price or bid/ask price at the time of calculation of such NAV, and a calculation of the premium or discount of the closing price or bid/ask price against such NAV. The website will also disclose the percentage weight overlap between the holdings of the Tracking Basket compared to the Fund Holdings for the prior business day and any information regarding the bid/ask spread for each

Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended. Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities.

The Exchange represents that the Shares of the Funds will continue to comply with all other requirements applicable to Tracking Fund Shares, including the dissemination of key information such as the Tracking Basket, the Fund Portfolio, and NAV, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, an information circular informing members of the special characteristics and risks associated with trading in the Shares, and firewalls as set forth in the Rules applicable to Tracking Fund Shares and the order approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²⁴ 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 asset (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or 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. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices in that the Rules relating to listing and trading of Tracking Fund Shares provide specific initial and

continued listing criteria required to be met by such securities.

Rules 14.11(m)(4)(B)(iii) and (iv) provide that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a Fund pursuant to Rule 14.12 under any of the circumstances described above and that the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Tracking Fund Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

Additionally, the Exchange believes that the requirements related to information protection enumerated under Rule 14.11(m)(2)(F) will act as a strong safeguard against any misuse and improper dissemination of information related to a Fund Portfolio, the Tracking Basket, or changes thereto. The requirement that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto will act to prevent any individual or entity from sharing such information externally.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Tracking Fund Shares. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. Any foreign common stocks held by the Fund will be traded on an exchange that is a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares,

²² 15 U.S.C. 78f.

²³ 15 U.S.C. 78f(b)(5).

²⁴ See *supra* note 14.

underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

As provided in Rule 14.11(m)(2)(D), the Adviser will upon request make available to the Exchange and/or FINRA, on behalf of the Exchange, the daily Fund Portfolio of each Fund. The Exchange believes that the ability to access the information on an as needed basis will provide it with sufficient information to perform the necessary regulatory functions associated with listing and trading the Shares on the Exchange, including the ability to monitor compliance with the initial and continued listing requirements as well as the ability to surveil for manipulation of the Shares.

In addition, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov. The Exchange also notes that the Exemptive Relief provides that the Funds will comply with Regulation Fair Disclosure, which prohibits selective disclosure of any material non-public information, which otherwise do not apply to issuers of Tracking Fund Shares.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed

line. The Exchange deems Tracking Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. Rather, the Exchange notes that the proposed rule change will facilitate the listing of several new series of actively-managed exchange-traded products, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange 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 as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6) thereunder.²⁶

A proposed rule change filed under Rule 19b-4(f)(6)²⁷ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁸ the Commission

may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposed rule change is substantially similar to other Tracking Fund Shares the Commission previously approved²⁹ and does not raise any novel regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.³⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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. Please include File Number SR-CboeBZX-2020-090 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.

²⁹ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF). See also Securities Exchange Act Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR-CboeBZX-2020-085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF).

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

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 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.

²⁷ 17 CFR 240.19b-4(f)(6).

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

All submissions should refer to File Number SR–CboeBZX–2020–090. 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–2020–090 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90701; File No. SR–OCC–2020–806]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Partial Amendment No. 1 and Notice of No Objection To Advance Notice, as Modified by Partial Amendment No. 1, Related to Proposed Changes To Update the Options Clearing Corporation's Recovery and Orderly Wind-Down Plan

December 17, 2020.

I. Introduction

On October 20, 2020, the Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) advance notice SR–OCC–2020–806 (“Advance Notice”) pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (“Clearing Supervision Act”)¹ and Rule 19b–4(n)(1)(i)² under the Securities Exchange Act of 1934 (“Exchange Act”)³ to make changes to OCC's Recovery and Orderly Wind-Down Plan (“RWD Plan”).⁴ The Advance Notice was published for public comment in the **Federal Register** on November 18, 2020,⁵ and the Commission has received no comments regarding the changes proposed in the Advance Notice.⁶ On November 18, 2020, OCC filed a partial amendment (“Partial Amendment No. 1”) to modify the Advance Notice.⁷ The

¹ 12 U.S.C. 5465(e)(1).

² 17 CFR 240.19b–4(n)(1)(i).

³ 15 U.S.C. 78a *et seq.*

⁴ See Notice of Filing *infra* note 5, at 85 FR 73553.

⁵ Securities Exchange Act Release No. 90416 (Nov. 13, 2020), 85 FR 73553 (Nov. 18, 2020) (File No. SR–OCC–2020–806) (“Notice of Filing”). On October 20, 2020, OCC also filed a related proposed rule change (SR–OCC–2020–013) with the Commission pursuant to Section 19(b)(1) of the Exchange Act and Rule 19b–4 thereunder (“Proposed Rule Change”). 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4, respectively. In the Proposed Rule Change, which was published in the **Federal Register** on November 9, 2020, OCC seeks approval of proposed changes to its rules necessary to implement the Advance Notice. Securities Exchange Act Release No. 90315 (Nov. 3, 2020), 85 FR 71384 (Nov. 9, 2020) (File No. SR–OCC–2020–013). The comment period for the related Proposed Rule Change filing closed on November 30, 2020.

⁶ Since the proposal contained in the Advance Notice was also filed as a proposed rule change, all public comments received on the proposal are considered regardless of whether the comments are submitted on the Proposed Rule Change or the Advance Notice.

⁷ In Partial Amendment No. 1, OCC corrects and updates a confidential Exhibit 5 to the materials filed on October 20, 2020 regarding File No. SR–OCC–2020–806. Partial Amendment No. 1 corrects

Commission is publishing this notice to solicit comments on Partial Amendment No. 1 from interested persons and, for the reasons discussed below, is hereby providing notice of no objection to the Advance Notice.

II. Background⁸

The Advance Notice concerns changes to OCC's RWD Plan. As described in greater detail below, OCC proposes to (1) update the RWD Plan to reflect changes to OCC's capital structure resulting from the disapproval of OCC's previously approved “Capital Plan”⁹ and the subsequent approval of OCC's “Capital Management Policy,”¹⁰ and (2) implement changes identified during OCC's annual review of the RWD Plan. The changes arise out of OCC's annual review of the RWD Plan and include factual updates (*e.g.*, market share and contract volume data) and streamlined discussions in the RWD Plan (*e.g.*, replacement of detailed overview of OCC's risk management program with a more concise summary).

Capital Management Policy Updates. As a result of the implementation of the Capital Management Policy, OCC is proposing changes to Chapters 2, 5, and 6 of its RWD Plan. In Chapter 2, OCC is proposing to revise its discussion of fee management for consistency with the Capital Management Policy. In Chapter 5, OCC is proposing to (i) replace its discussion of the Replenishment Plan established under the disapproved Capital Plan with a discussion of the replenishment structure adopted under the Capital Management Policy; (ii) replace references to the discretionary use of OCC's current and/or retained earnings with references to the mandatory contribution—immediately following the use of margin, deposits in lieu of margin and the Clearing Fund deposits of the suspended Clearing Member—of OCC's current and retained earnings greater than 110% of OCC's annually-established “Target Capital Requirement;” (iii) update the description of how OCC could increase the minimum required cash

an error in the proposed rule text and updates the list of vendor agreements attached to the RWD Plan, but did not change the purpose of or basis for the Advance Notice. References to the Advance Notice from this point forward refer to the Advance Notice, as amended by Partial Amendment No. 1.

⁸ Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at <https://www.theocc.com/about/publications/bylaws.jsp>.

⁹ See Securities Exchange Act Release No. 85121 (Feb. 13, 2019), 84 FR 5157 (Feb. 20, 2019) (File No. SR–OCC–2015–02).

¹⁰ See Securities Exchange Act Release No. 86725 (Aug. 21, 2019), 84 FR 44952 (Aug. 27, 2019) (File No. SR–OCC–2019–007).

³¹ 17 CFR 200.30–3(a)(12).