

bitcoin ETP;<sup>201</sup> and the bitcoin network's effect on the environment.<sup>202</sup> Ultimately, however, additional discussion of these topics is unnecessary, as they do not bear on the basis for the Commission's decision to disapprove the proposal.

#### IV. Conclusion

For the reasons set forth above, the Commission does not find, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) of the Exchange Act.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act, that proposed rule change SR–CboeBZX–2021–029 be, and hereby is, disapproved.

By the Commission.

**Vanessa A. Countryman,**  
Secretary.

[FR Doc. 2021–28255 Filed 12–28–21; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93851; File No. SR–NYSE–2021–73]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 37 To Incorporate Standards of Conduct for the Exchange's Trading Floor

December 22, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 13, 2021, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend Rule 37 to incorporate standards of conduct for the Exchange's Trading Floor modeled on rules of the Exchange's affiliates NYSE American LLC and NYSE Arca, Inc., and to add amended Rule 37 to the list of minor rule violations in Rule 9217. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

##### 1. Purpose

The Exchange proposes to amend Rule 37 (Visitors) to incorporate standards of conduct for the Exchange's Trading Floor modeled on the rules of the Exchange's affiliates NYSE American LLC (“NYSE American”) and NYSE Arca, Inc. (“NYSE Arca”), and to add amended Rule 37 to the list of minor rule violations in Rule 9217.

##### Background

Rule 37 currently provides that visitors to the Floor shall not be admitted to the Floor of the Exchange except by permission of the Exchange. Historically, the behavior and conduct of members<sup>4</sup> on the trading Floor was regulated by Floor Conduct and Safety Guidelines administered by NYSE Floor Officials. The NYSE eliminated the role

and function of NYSE Floor Officials earlier this year.<sup>5</sup>

NYSE American Rule 902NY (Admission and Conduct on the Options Trading Floor) and NYSE Arca Rule 6.2–O (Admission to and Conduct on the Options Trading Floor) specify standards of conduct and dress for persons to follow while on the NYSE American and NYSE Arca options trading floors as well requirements for trading floor badges. The rules are substantially similar.

NYSE American Rule 902NY(b) and NYSE Arca Rule 6.2–O(b) are titled “Conduct on the Floor” and provide that a permit holder may be fined upon the determination of a Trading Official that the permit holder's conduct on the options trading floor was such as to impair the maintenance of a fair and orderly market, or to impair public confidence in the operations of the exchange. The provisions of NYSE American Rule 902NY(b) and NYSE Arca Rule 6.2–O(b) also apply to a permit holder's failure to adequately supervise an employee to ensure his or her compliance with this rule. Permit holders adversely affected by a determination made under these rules may obtain review thereof consistent with other NYSE American and NYSE Arca rules, as applicable. However, fines imposed by a Trading Official under those rules do not preclude further disciplinary action by the respective exchanges.

Under NYSE American Rule 902NY(c) and NYSE Arca Rule 6.2–O(c) titled “Standards of Dress and Conduct,” all permit holders are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the respective exchanges. Under the rules, all persons on the options trading floors must comply with certain standards of dress and conduct, as follows. NYSE American Rule 902NY(c)(1) and NYSE Arca Rule 6.2–O(c)(1) provide that all persons on the options trading floor, whether permit holders, employees of permit holders or visitors, shall at all times, whether prior to, during or after trading sessions, be dressed in a manner appropriate for business purposes and in accordance with good taste and professional standards. The rules provide that the term “good taste” shall be interpreted in a conservative manner. In addition, under the rules, the following requirements and prohibitions shall be observed:

<sup>201</sup> See, e.g., Kuhn Letter.

<sup>202</sup> See, e.g., Patel Letter.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Floor or any facility thereof.

<sup>5</sup> See Securities Exchange Act Release No. 92193 (June 16, 2021), 82 FR 32024 (June 23, 2021) (SR–NYSE–2020–105) (Order).

- Personal attire must be neat, clean and presentable.

- All persons must wear trading jackets and/or suit or sport coats while present on the options trading floors.

- Each exchange may impose additional standards of dress or otherwise modify these standards of dress by means of a written policy that will be distributed to permit holders.

NYSE American Rule 902NY(c)(2)(A) and NYSE Arca Rule 6.2–O(c)(2)(A) specify that all persons on the trading floors are required to conduct themselves in accordance with a seemly and professional standard of behavior. No person while on the options trading floor shall:

- Engage in any act or practice that may be detrimental to the interest or welfare of the exchange (NYSE American Rule 902NY(c)(2)(A)(i) and NYSE Arca Rule 6.2–O(c)(2)(A)(i)); or
- engage in any act or practice that may serve to disrupt or hinder the ordinary and efficient conduct of business (NYSE American Rule 902NY(c)(2)(A)(ii) and NYSE Arca Rule 6.2–O(c)(2)(A)(ii)); or

- engage in any act or practice that may serve to jeopardize the safety or welfare of any other individual (NYSE American Rule 902NY(c)(2)(A)(iii) and NYSE Arca Rule 6.2–O(c)(2)(A)(iii)); or
- act in a disorderly manner, which includes, but is not limited to, the use of abusive or indecorous language (NYSE American Rule 902NY(c)(2)(A)(iv) and NYSE Arca Rule 6.2–O(c)(2)(A)(iv)).

NYSE American Rule 902NY(c)(2)(B) and NYSE Arca Rule 6.2–O(c)(2)(B) further provide that food or drink may be permitted at the discretion of the exchange and that alcoholic beverages may not be consumed on the trading floor at any time.

Under NYSE American Rule 902NY(c)(2)(C) and NYSE Arca Rule 6.2–O(c)(2)(C), smoking in any form, any kind of tobacco use, or any expectorating on the trading floor is prohibited. The prohibitions NYSE American Rule 902NY(c)(2)(C) and NYSE Arca Rule 6.2–O(c)(2)(C) apply at all times whether or not the floors are in session.

NYSE American Rule 902NY(c)(2)(D) and NYSE Arca Rule 6.2–O(c)(2)(D) prohibit running on the floor, which means any movement at a degree of speed which may disrupt other occupants of the trading floor.

NYSE American Rule 902NY(c)(2)(E) and NYSE Arca Rule 6.2–O(c)(2)(E) prohibit standing on chairs, furniture, booths, ladders, stools and similar items.

NYSE American Rule 902NY(c)(2)(F) and NYSE Arca Rule 6.2–O(c)(2)(F) provides that no object of any kind may be placed in the trading post areas if it could obstruct the flow of people in or out of the trading crowd.

Finally, NYSE American Rule 902NY(d)(1) and NYSE Arca Rule 6.2–O(d)(1) provide that admission to the trading floors is by exchange issued badge only and that, while on the trading floor, all persons must at all times display appropriate badges. The rules further provide that authorized persons seeking admission to the floor without a badge must show proper identification and obtain a temporary badge from the Security Office, and that permit holders may be subject to a processing fee related to the issuance of a temporary access badge. NYSE American Rule 902NY(d)(2) and NYSE Arca Rule 6.2–O(d)(2) govern withdrawal of trading floor badges.

#### Proposed Rule Change

##### Amended Rule 37

The Exchange proposes to revise Rule 37 to add to NYSE Rules the standards for conduct, dress and trading badges contained in NYSE American Rule 902NY and NYSE Arca Rule 6.2–O, with certain modifications as described below, and to amend Rule 9217 to provide for minor rule fines for violations of those standards. The proposed rule change would align the Exchange's rules with those of its affiliates as it relates to both the standards members accessing and working on the Floor must follow and the application of minor rule fines for violations of those standards.<sup>6</sup>

To effectuate this change, the Exchange proposes the following amendments to Rule 37.

First, Rule 37 would be renamed “Admission and Conduct on the Trading Floor” similar to the NYSE

American and NYSE Arca options rules, with a difference to use the term “Trading Floor.”

Second, the existing text of Rule 37 governing admissions would be relocated to a new subsection (a) titled “Admission,” once again along the lines of the NYSE American and NYSE Arca options rules.<sup>7</sup> The existing text would be unchanged.

Third, the Exchange would adopt a new subsection (b) titled “Conduct on the Trading Floor” that would be substantially similar to NYSE American Rule 902NY(b) and NYSE Arca Rule 6.2–O(b). The proposed rule would provide that while on the Trading Floor, all members are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the Exchange.<sup>8</sup> The proposed rule would further provide that upon the determination that a member's conduct on the Floor is such as to impair the maintenance of a fair and orderly market, or to impair public confidence in the operations of the Exchange, or that a member has otherwise violated the proposed rule, a member may be disciplined in accordance with the Rule 9000 Series, the Exchange's disciplinary rules. Proposed Rule 37(b) would also apply to a member's failure to adequately supervise an employee or guest of the member to ensure compliance with the proposed rule. Unlike the NYSE American and NYSE Arca rules, the Exchange would explicitly refer to failure to adequately supervise a guest of the member in the proposed rule. Because violations of this Rule would be subject to discipline pursuant to the Rule 9000 Series, the Exchange proposes to include the phrase “or that a member has otherwise violated this rule” and exclude a statement that that fines imposed thereunder would not preclude further disciplinary action by the Exchange. Finally, unlike the NYSE American and NYSE Arca rules, the proposed rule would omit any reference to Exchange Trading Officials, who are not regulatory employees, unlike their options market counterparts. As proposed, Rule 37 would be administered by the Exchange's regulatory staff.

Fourth, the Exchange proposes a new subsection (c) titled “Standards of Dress and Conduct” that is also substantially similar to NYSE American Rule 902NY(c) and NYSE Arca Rule 6.2–O(c).

<sup>6</sup> The term “Floor” is defined in NYSE Rule 6 to mean “the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations.” The term “Trading Floor” is defined in NYSE Rule 6A to mean “the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the ‘Main Room’ and the ‘Buttonwood Room.’” The NYSE Trading Floor does not include: “(i) the areas in the ‘Buttonwood Room’ designated by the Exchange where NYSE American-listed options are traded, which, for the purposes of the Exchange's Rules, shall be referred to as the ‘NYSE American Options Trading Floor’ or (ii) the physical area within fully enclosed telephone booths located in 18 Broad Street at the Southeast wall of the Trading Floor.” The areas designated by the Exchange where NYSE American-listed options are traded are subject to NYSE American Rule 902NY, described above.

<sup>7</sup> See, e.g., NYSE American Rule 902NY(e).

<sup>8</sup> The first sentence of proposed Rule 37(b) would be based on NYSE American Rule 902NY(c) and NYSE Arca Rule 6.2–O(c).

Proposed Rule 37(c) would provide that all persons on the Floor must comply with the standards of dress and conduct set forth in proposed Rule 37(c)(1)(A)-(C), as follows.

Proposed Rule 37(c)(1) would be titled “Standards of Dress” and would provide that all persons on the Floor, whether members, employees of member organizations or visitors, must at all times, whether prior to, during or after trading sessions, be dressed in a manner appropriate for business purposes and in accordance with good taste and professional standards. Like the NYSE American and NYSE Arca rules, proposed Rule 37(c)(1) would provide that the term “good taste” will be interpreted in a conservative manner. In addition, proposed Rule 37(c)(1) would set forth the following requirements and prohibitions:

- Proposed Rule 37(c)(1)(A) would provide that personal attire must be neat, clean and presentable.
- Proposed Rule 37(c)(1)(B) would provide that all members and employees of member organizations must wear trading jackets and/or suit or sport coats while present on the Floor.
- Proposed Rule 37(c)(1)(C) would provide that the Exchange may impose additional standards of dress or otherwise modify these standards of dress by means of a written policy that will be distributed to all members and member organizations.

Proposed Rule 37(c)(2) would be titled “Standards of Conduct.” Proposed subsection (A) of Rule 37(c)(2) would provide that all persons on the Floor are required to conduct themselves in accordance with a seemly and professional standard of behavior. Specifically, the proposed Rule would specify that no person while on the Floor shall:

- Engage in any act or practice that may be detrimental to the interest or welfare of the Exchange (proposed Rule 37(c)(2)(A)(i)); or
- engage in any act or practice that may serve to disrupt or hinder the ordinary and efficient conduct of business (proposed Rule 37(c)(2)(A)(ii)); or
- engage in any act or practice that may serve to jeopardize the safety or welfare of any other individual (proposed Rule 37(c)(2)(A)(iii)); or
- act in a disorderly manner, which includes, but is not limited to, use of abusive or indecorous language and the display or circulation of written material or graphic images that are harassing, inappropriate, offensive, and/or lewd (proposed Rule 37(c)(2)(A)(iv)).

Proposed subsection (B) of Rule 37(c)(2) would provide that entry and

consumption of food or drink on the Trading Floor may be permitted at the discretion of the Exchange and that food or drink should only be consumed at the booth or post. Finally, proposed Rule 37(c)(2)(B) would provide that alcoholic beverages may not be consumed on the Trading Floor during business hours as defined in Rule 7.1 (Hours of Business). The proposed Rule differs slightly from the NYSE American and NYSE Arca rules, which prohibit consumption of alcoholic beverages at any time.

Proposed subsection (C) of Rule 37(c)(2) would prohibit smoking in any form, any kind of tobacco use, or any expectorating on the Floor and clarify that this prohibition would apply at all times. The proposed Rule is identical to the NYSE American and NYSE Arca versions.

Proposed subsection (D) of Rule 37(c)(2) would prohibit running on the Trading Floor, which the proposed Rule would define as any movement at a degree of speed which may disrupt other occupants of the Floor. Once again, the proposed Rule is identical to the NYSE American and NYSE Arca versions.

Proposed subsection (E) of Rule 37(c)(2) would prohibit standing on chairs, furniture, booths, ladders, stools and similar items. The proposed Rule is the same as NYSE American Rule 902NY(c)(2)(E) and NYSE Arca Rule 6.2–O(c)(2)(E).

Proposed subsection (F) of Rule 37(c)(2) would provide that no object of any kind may be placed in the trading post areas, including all chairs, stools or other furniture, if it could obstruct the flow of people in or out of the Trading Floor. The Exchange determined to exclude the reference to the trading crowd that appears in the NYSE American and NYSE Arca rules.

Fifth and finally, the Exchange proposes a new subsection (d) to Rule 37 titled “Trading Floor Badges.” Rule 303 (Limitation on Access to Floor) currently requires members on the Floor to be provided with a badge that must be worn while on the Floor.<sup>9</sup> Proposed Rule 37(d) would supplement Rule 303 by specifying, similar to NYSE American Rule 902NY(d) and NYSE Arca Rule 6.2–O(d), that admission to the Floor will be by Exchange-issued badge only and that Exchange-issued badges must be appropriately displayed, with the photo visible, at all times while on the Floor. The proposed Rule would

<sup>9</sup> Rule 303(a) provides that members who execute orders on the Floor must be provided with an identification badge and must wear the same while on the Floor, and that every member's badge must contain his or her name and a number and the name of his or her member organization.

also specify that use of an Exchange-issued badge belonging to another member or Floor employee to enter or exit the Floor is prohibited. In addition, the proposed Rule would provide that authorized persons seeking admission to the Floor without a badge must show proper identification and obtain a temporary badge from the Security Office. Finally, proposed Rule 37(d) would provide that visitor's badges are not acceptable identification cards for Floor employees.

#### Minor Rule Fines

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under Rule 9216(b). Rule 9217 permits the Exchange to impose a fine of up to \$5,000 on any member or covered person for a minor violation of an eligible rule.

The Exchange proposes to amend Rule 9217 to add the proposed Rule 37 provisions governing floor decorum, disruptive actions involving physical contact while on the Floor, use of abusive language, rules on visitors, abuse of Exchange property, and misuse of Exchange-issued badge or identification to the list of rules in Rule 9217 eligible for disposition pursuant to a minor fine under Rule 9216(b). Each of these violations of NYSE American Rule 902NY and NYSE Arca Rule 6.2–O are eligible for minor rule fines under those markets' respective versions of Rule 9217.<sup>10</sup>

The Exchange believes that the proposed changes would have the immediate effect of aligning the Exchange's rules regarding Floor conduct and decorum with the rules of its affiliates that also have trading floors. Moreover, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

<sup>10</sup> See NYSE American Rule 9217(i)(14) (violation of rules related to floor decorum); (i)(15) (disruptive action involving physical contact while on the Trading Floor); (i)(16) (ATP Holder used abusive language on the trading floor); (i)(20) (violation of rules on visitors to the options floor); (i)(21) (misuse of ATP Holder badge or identification); and (i)(25) (abusing exchange property); NYSE Arca Rule 10.9217(e)(16) (violation of rules related to floor decorum); (e)(17) (disruptive action involving physical contact while on the trading floor); (e)(19) (OTP Holder used abusive language on the trading floor); (e)(31) (violation of rules on visitors to the options floor); (e)(32) (misuse of OTP Holder badge or OTP Firm identification); and (e)(36) (abusing exchange property).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by adopting the same standards as its affiliates that members accessing and working on a trading floor must follow. By providing greater harmonization between Exchange rules and those of its affiliates that also have trading floors regarding access, conduct and decorum, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Moreover, by adopting the same applicable minor rule fines for violations of those standards as its affiliates, the Exchange would promote regulatory consistency. Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Rule 9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient

manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the dress, conduct and decorum requirements set forth in proposed Rule 37 where a more formal disciplinary action may not be warranted or appropriate.

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,<sup>13</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of proposed Rule 37 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>14</sup> Rule 9217 does not preclude a member organization or covered person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

In accordance with Section 6(b)(8) of the Act,<sup>15</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather relates to the adoption of rules regarding access, conduct and decorum on the Exchange's trading floor that are consistent with those of the Exchange's affiliates that also have trading floors, and providing applicable minor rule fines for violations of those standards, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSE-2021-73 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-NYSE-2021-73. 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

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(6).

<sup>14</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

<sup>15</sup> 15 U.S.C. 78f(b)(8).

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-NYSE-2021-73 and should be submitted on or before January 19, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-28246 Filed 12-28-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34451; File No. 812-15228]

### FMI Funds, Inc., et al.

December 22, 2021.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice.

Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

**Applicants:** FMI Funds, Inc. ("Company"), Fiduciary Management, Inc. (the "Initial Adviser") and Foreside Financial Services, LLC (the "Distributor", and, together with the Company, and the Adviser, the "Applicants").

**Summary of Application:** Applicants request an order ("Order") that permits: (a) The Funds (defined below) to issue shares ("Shares") redeemable in large aggregations only ("creation units"); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds,

under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time ("Reference Order").<sup>1</sup>

**Filing Date:** The application was filed on May 5, 2021, and amended on July 30, 2021.

**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 emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov) and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 17, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov).

**ADDRESSES:** The Commission: [Secretarys-Office@sec.gov](mailto:Secretarys-Office@sec.gov). Applicants: John S. Brandser, Fiduciary Management, Inc., 100 East Wisconsin, Suite 2200, Milwaukee, WI 53202, [rladwig@fmimgt.com](mailto:rladwig@fmimgt.com); Peter D. Fetzer, Foley & Lardner LLP, 777 East Wisconsin Avenue, Milwaukee, WI 53202, [pfetzer@foley.com](mailto:pfetzer@foley.com).

**FOR FURTHER INFORMATION CONTACT:** Jessica Shin, Attorney-Adviser, at (202) 551-3685 or Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the

<sup>1</sup> Natixis ETF Trust II, et al., Investment Company Act Rel. Nos. 33684 (November 14, 2019) (notice) and 33711 (December 10, 2019) (order). Applicants are not seeking relief under section 12(d)(1)(f) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act (the "Section 12(d)(1) Relief"), and relief under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act relating to the Section 12(d)(1) Relief, as granted in the Reference Order. Accordingly, to the extent the terms and conditions of the Reference Order relate to such relief, they are not incorporated by reference into the Order.

application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <https://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

### Applicants

1. The Company is a corporation organized under the laws of the State of Maryland. The Company currently consists of four series, and will consist of one or more series operating as a Fund. The Company is registered as an open-end management investment company under the Act. Applicants seek relief with respect to Funds (as defined below), including an initial Fund (the "Initial Fund"). The Funds will offer exchange-traded shares utilizing active management investment strategies as contemplated by the Reference Order.<sup>2</sup>

2. The Initial Adviser, a Wisconsin corporation, will be the investment adviser to the Initial Fund. Subject to approval by the Funds' board of trustees, an Adviser (as defined below) will serve as investment adviser to each Fund. The Initial Adviser is, and any other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). The Adviser may enter into sub-advisory agreements with other investment advisers to act as sub-advisers with respect to the Funds (each a "Sub-Adviser"). Any Sub-Adviser to a Fund will be registered under the Advisers Act.

3. The Distributor, a Delaware limited liability company, is a broker-dealer registered under the Securities Exchange Act of 1934, as amended, and will act as the distributor and principal underwriter of Shares of the Funds. Applicants request that the requested relief apply to any distributor of Shares, whether affiliated or unaffiliated with the Adviser and/or Sub-Adviser. Any Distributor will comply with the terms and conditions of the Order.

### Applicants' Requested Exemptive Relief

4. Applicants seek the requested Order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act. The requested Order would permit applicants to offer Funds that utilize the NYSE Proxy Portfolio

<sup>2</sup> To facilitate arbitrage, among other things, each day a Fund will publish a basket of securities and cash that, while different from the Fund's portfolio, is designed to closely track its daily performance.

<sup>16</sup> 17 CFR 200.30-3(a)(12).