

are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.²² Further, NYSE American states that Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.²³ FINRA has launched an online test delivery service to help address this backlog. However, the General Securities Principal (Series 24) Examination is not available online. NYSE American states that the temporary proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on Members' operations during the COVID-19 pandemic without significantly compromising critical investor protection.²⁴

The Commission also notes that the proposal provides only temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals through December 31, 2020. NYSE American has also stated that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.²⁵ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²⁶ Accordingly, the

Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁷

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 shall institute proceedings to determine whether the proposed rule 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-NYSEAMER-2020-71 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-NYSEAMER-2020-71. 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

waiver of the 30-day operative delay. See *supra* note 6, 85 FR at 55538.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

printing in the Commission's Public Reference Room, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE American. 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-NYSEAMER-2020-71 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020-22634 Filed 10-9-20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90104; File No. SR-NYSEArca-2020-84]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending NYSE Arca Rule 8.900-E To Adopt Generic Listing Standards for Managed Portfolio Shares

October 7, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on September 22, 2020, NYSE Arca, Inc. ("NYSE Arca" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On October 2, 2020, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons.

²⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

²² See *supra* note 14.

²³ See *supra* notes 11 and 12. NYSE American states that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²⁴ NYSE American states that Members remain subject to the continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE American rules.

²⁵ See *supra* note 5.

²⁶ As noted above by the Exchange, this proposed temporary change is based on a recent filing by FINRA that the Commission approved with a

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

The Exchange proposes to amend NYSE Arca Rule 8.900-E to adopt generic listing standards for Managed Portfolio Shares. This Amendment No. 1 to SR-NYSEArca-2020-84 replaces SR-NYSEArca-2020-84 as originally filed and supersedes such filing in its entirety. The proposed change is available on the Exchange's website at 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 NYSE Arca Rule 8.900-E to adopt generic listing standards for Managed Portfolio Shares. Under the Exchange's current rules, a proposed rule change must be filed with the Securities and Exchange Commission ("SEC" or "Commission") for the listing and trading of each new series of Managed Portfolio Shares. The Exchange believes that it is appropriate to codify certain rules within Rule 8.900-E that would generally reduce the need for such proposed rule changes, which would create greater efficiency and promote uniform standards in the listing process.

Background

Rule 8.900-E sets forth certain rules related to the listing and trading of Managed Portfolio Shares.⁴

The Commission has previously approved listing and trading of series of Managed Portfolio Shares on the Exchange under NYSE Arca Rule 8.900-

E and on other national securities exchanges under substantially equivalent listing rules.⁵ Currently, three series of Managed Portfolio Shares are listed and traded on the Cboe BZX Exchange, Inc.⁶

Rule 8.900-E(b)(1) provides that the Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares. The rule further provides that all statements or representations contained in such rule filing regarding (a) the description of the portfolio or reference asset, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in such rule filing will constitute continued listing requirements. An issuer of such securities must notify the Exchange of any failure to comply with such continued listing requirements.

Key Features of Managed Portfolio Shares

While each series of Managed Portfolio Shares will be actively managed and, to that extent, will be similar, for example, to Managed Fund Shares (as defined in Rule 8.600-E),⁷

⁵ See Securities Exchange Act Release Nos. 89633 (August 25, 2020), 85 FR 53868 (August 31, 2020) (SR-NYSEArca-2020-48) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, to List and Trade Shares of Gabelli ETFs under Rule 8.900-E) (the "Gabelli Approval Order"); 88247 (February 20, 2020), 85 FR 11137 (February 26, 2020) (SR-CboeBZX-2019-102) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3 thereto, to List and Trade Shares of the ClearBridge Focus Value ETF under BZX Rule 14.11(k)) ("ClearBridge Approval Order"); 88175 (February 12, 2020), 85 FR 9494 (February 19, 2020) (SR-CboeBZX-2019-057) (Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2 thereto, to List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF under BZX Rule 14.11(k)) ("American Century Approval Order", together with the Gabelli Approval Order, ClearBridge Approval Order and American Century Approval Order, the "Approval Orders").

⁶ See ClearBridge Approval Order and American Century Approval Order, referenced in note 5, *supra*.

⁷ The Commission approved a proposed rule change to adopt rules permitting the listing and trading of Managed Fund Shares. See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) (Order Granting Accelerated Approval of Rules Permitting the Listing and Trading of Managed Fund Shares, Trading Hours and Halts, Listing Fees Applicable To Managed Fund Shares). The Commission has also previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under Rule 8.600-E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR-NYSEArca-2008-31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust; 63802 (January 31,

Managed Portfolio Shares differ from Managed Fund Shares in the following important respects.⁸ First, in contrast to Managed Fund Shares, which require a "Disclosed Portfolio" to be disseminated at least once daily,⁹ the portfolio for a series of Managed Portfolio Shares will be disclosed quarterly in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the Investment Company Act of 1940 ("1940 Act").¹⁰ The composition of the portfolio of a series of Managed Portfolio Shares would not be available at commencement of Exchange listing and/or trading. Second, in connection with the creation and redemption of shares in "Creation Unit" or "Redemption Unit" size, the delivery of any portfolio securities in kind will be effected through a "Confidential Account" for the benefit of the creating or redeeming Authorized Participant

2011), 76 FR 6503 (February 4, 2011) (SR-NYSEArca-2010-118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF).

⁸ Rule 8.900-E(c)(1) defines the term "Managed Portfolio Share" as a security that (a) represents an interest in an investment company registered under the Investment Company Act of 1940 ("Investment Company") organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (b) is issued in a Creation Unit, or multiples thereof, in return for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value and delivered to the Authorized Participant (as defined in the Investment Company's Form N-1A filed with the Commission) through a Confidential Account; (c) when aggregated into a Redemption Unit, or multiples thereof, may be redeemed for a designated portfolio of instruments (and/or an amount of cash) with a value equal to the next determined net asset value delivered to the Confidential Account for the benefit of the Authorized Participant; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁹ NYSE Arca Rule 8.600-E(c)(2) defines the term "Disclosed Portfolio" as 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. NYSE Arca Rule 8.600-E(d)(2)(B)(i) requires that the Disclosed Portfolio be disseminated at least once daily and be made available to all market participants at the same time.

¹⁰ 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.

⁴ See Securities Exchange Act Release No. 88648 (April 15, 2020), 85 FR 22200 (April 21, 2020) (SR-NYSEArca-2020-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New NYSE Arca Rule 8.900-E).

(“AP”) without disclosing the identity of such securities to the AP.¹¹

For each series of Managed Portfolio Shares, an estimated value—the Verified Intraday Indicative Value or “VIIV”—that reflects an estimated intraday value of a fund’s portfolio will be disseminated.¹² Specifically, the VIIV will be based upon all of a series’ holdings as of the close of the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day. The VIIV will be widely disseminated by the “Reporting Authority” and/or one or more major market data vendors in one second intervals during the Exchange’s Core Trading Session and will be disseminated to all market participants at the same time. The dissemination of the VIIV will allow investors to determine the estimated intra-day value of the underlying portfolio of a series of Managed Portfolio Shares and will provide a close estimate of that value throughout the trading day.

In addition, Rule 8.900–E currently provides criteria that Managed Portfolio Shares must satisfy for initial and continued listing on the Exchange, including, for example, that a minimum number of Managed Portfolio Shares are required to be outstanding at the time of commencement of trading on the Exchange. However, the current process for listing and trading new series of Managed Portfolio Shares on the Exchange requires that the Exchange

submit a proposed rule change with the Commission. In this regard, as noted above, Rule 8.900–E(b)(1) specifies that the Exchange will file separate proposals under Section 19(b) of the Act before listing and trading of shares of a series of Managed Portfolio Shares.

Proposed Changes To Rule 8.900–E

The Exchange proposes to amend Rule 8.900–E(b) to specify that the Exchange may approve Managed Portfolio Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to SEC Rule 19b–4(e) under the Act, which pertains to derivative securities products (“SEC Rule 19b–4(e)”).¹³ SEC Rule 19b–4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4,¹⁴ if the Commission has approved, pursuant to section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. This is the current method pursuant to which “passive” ETFs are listed under NYSE Arca Rule 5.2–E(j)(3), actively-managed ETFs are listed under NYSE Arca Rule 8.600–E, and Exchange-Traded Fund Shares are listed under NYSE Arca Rule 5.2–E(j)(8).

The Exchange would also specify in Rule 8.900–E(b) that components of a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) shall satisfy the criteria set forth in Rule 8.900–E and proposed Commentary .01 thereto upon initial listing and on a continual basis. The Exchange will file separate proposals under Section 19(b) of the Act before the listing and trading of a series of Managed Portfolio Shares with components that do not satisfy the criteria set forth in proposed Commentary .01 or components other than those specified in Commentary .01(a). For example, if the components of a series of Managed Portfolio Shares included a security or asset that is not specified in proposed Commentary

.01(a), the Exchange would file a separate proposed rule change.

Proposed Commentary .01(a) provides that the portfolio holdings for a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) shall include only the following:

- (1) U.S. exchange-traded securities that are common stocks; preferred stocks; American Depositary Receipts; and real estate investment trusts;
- (2) U.S. exchange-traded funds that are listed under the following rules: Investment Company Units (Rule 5.2–E(j)(3)); Exchange-Traded Fund Shares (Rule 5.2–E(j)(8)); Portfolio Depositary Receipts (Rule 8.100–E); Managed Fund Shares (Rule 8.600–E); Active Proxy Portfolio Shares (Rule 8.601–E); and Managed Portfolio Shares (Rule 8.900–E);
- (3) Equity Gold Shares (Rule 5.2–E(j)(5));
- (4) Index-Linked Securities (Rule 5.2–E(j)(6));
- (5) Commodity-Based Trust Shares (Rule 8.201–E);
- (6) Currency Trust Shares (Rule 8.202–E);
- (7) the following securities, which are required to be organized as commodity pools: Commodity Index Trust Shares (Rule 8.203–E); Commodity Futures Trust Shares (Rule 8.204–E); Trust Units (Rule 8.500–E); and Managed Trust Securities (Rule 8.700–E);
- (8) the following securities if organized as commodity pools: Trust Issued Receipts (Rule 8.200–E) and Partnership Units (Rule 8.300–E);
- (9) U.S. exchange-traded futures that trade contemporaneously with shares of a series of Managed Portfolio Shares in the Exchange’s Core Trading Session; and
- (10) Cash and cash equivalents. Cash equivalents are the following: Short-term U.S. Treasury securities, government money market funds, and repurchase agreements.

Proposed Commentary .01(b) provides that a series of Managed Portfolio Shares listed pursuant to Rule 19b–4(e) will not hold short positions in securities and other financial instruments referenced in proposed Commentary .01(a)(1)–(10).

Proposed Commentary .01(c) provides that the securities referenced above in proposed Commentary .01(a)(2)–(8) shall include securities listed on another national securities exchange pursuant to substantially equivalent listing rules.

The securities and financial instruments enumerated in proposed Commentary .01(a) to Rule 8.900–E are consistent with, and limited to, the “permissible investments” for series of Managed Portfolio Shares previously

¹¹ NYSE Arca Rule 8.900–E(c)(4) defines the term “Confidential Account” as “an account owned by an Authorized Participant and held with an AP Representative on behalf of the Authorized Participant. The account will be established and governed by contractual agreement between the AP Representative and the Authorized Participant solely for the purposes of creation and redemption, while keeping confidential the Creation Basket constituents of each series of Managed Portfolio Shares, including from the Authorized Participant. The books and records of the Confidential Account will be maintained by the AP Representative on behalf of the Authorized Participant.” NYSE Arca Rule 8.900–E(c)(3) defines the term “AP Representative” as “an unaffiliated broker-dealer, with which an Authorized Participant has signed an agreement to establish a Confidential Account for the benefit of such Authorized Participant, that will deliver or receive, on behalf of the Authorized Participant, all consideration to or from the Investment Company in a creation or redemption. An AP Representative will not be permitted to disclose the Creation Basket to any person, including the Authorized Participants.”

¹² Rule 8.900–E(c)(2) defines the term “Verified Intraday Indicative Value (“VIIV”) as the indicative value of a Managed Portfolio Share based on all of the holdings of a series of Managed Portfolio Shares as of the close of business on the prior business day and, for corporate actions, based on the applicable holdings as of the opening of business on the current business day, priced and disseminated in one second intervals during the Core Trading Session by the Reporting Authority.

¹³ 17 CFR 240.19b–4(e). As provided under SEC Rule 19b–4(e), the term “new derivative securities product” means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

¹⁴ 17 CFR 240.19b–4(c)(1). As provided under SEC Rule 19b–4(c)(1), a stated policy, practice, or interpretation of the SRO shall be deemed to be a proposed rule change unless it is reasonably and fairly implied by an existing rule of the SRO.

approved by the Commission for Exchange listing and trading, as described in the Approval Orders.¹⁵ Each such series has filed an application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder, and the Commission has issued orders under the 1940 Act granting the exemptions requested in such applications.¹⁶ Such applications made substantially identical representations specifying the instruments that a series of Managed Portfolio Shares is permitted to hold, and a series of Managed Portfolio Shares listed generically pursuant to Commentary .01 would be limited to such holdings on an initial and continued listing basis.¹⁷

The regulatory staff of the Exchange, or the Financial Industry Regulatory Authority, Inc. (“FINRA”), on behalf of the Exchange, will communicate as needed regarding trading in Managed Portfolio Shares, other exchange-traded equity securities and futures contracts with other markets that are members of the Intermarket Surveillance Group (“ISG”), including U.S. exchanges on which the components are traded. In addition, the Exchange may obtain information regarding trading in Managed Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded. Pursuant to Rule 8.900–E(b)(3), an Investment Company’s investment adviser will upon request by the Exchange or FINRA, on behalf of the Exchange, make available to the Exchange or FINRA the daily portfolio holdings of each series of Managed Portfolio Shares.

With respect to the proposed amendment to Commentary .01(a)(10) relating to cash and cash equivalents,

the enumerated cash equivalents—short-term U.S. Treasury securities, government money market funds, and repurchase agreements—also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600–E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.¹⁸

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Managed Portfolio Shares are reasonably designed to promote a fair and orderly market for such Managed Portfolio Shares. These proposed standards would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading guidelines.

In support of this proposal, the Exchange represents that:

(1) Managed Portfolio Shares listed generically pursuant to Commentary .01 will conform to the initial and continued listing criteria under Rule 8.900–E as it is proposed to be amended and proposed Commentary .01 thereto;

(2) the Exchange’s surveillance procedures are adequate to continue to properly monitor the trading of Managed Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which will include Managed Portfolio Shares, to monitor trading in the Managed Portfolio Shares;

(3) the issuer of a series of Managed Portfolio Shares will be required to comply with Rule 10A–3 under the Act for the initial and continued listing of Managed Portfolio Shares, as provided under NYSE Arca Rule 5.3–E.

Prior to listing, pursuant to Rule 8.900–E(b) an issuer would be required to represent to the Exchange that it will notify the Exchange of any failure by a series of Managed Portfolio Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing

requirements. If a series of Managed Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

All Managed Portfolio Shares listed and/or traded pursuant to Rule 8.900–E (including pursuant to unlisted trading privileges) are subject to all Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and that the Exchange is not aware of any problems that Equity Trading Permit Holders or issuers would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest because it would facilitate the listing and trading of additional Managed Portfolio Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that, in view of the Commission’s approval of Exchange rules for Managed Portfolio Shares and commencement of Exchange trading of shares of series of Managed Portfolio Shares,²¹ it is appropriate to codify certain rules within Rule 8.900–E that would generally reduce the need for separate proposed rule changes. The Exchange believes that this would facilitate the listing and trading of additional types of Managed Portfolio Shares that have investment portfolios that are similar to investment portfolios for other exchange-traded funds that have been approved for listing and trading, thereby creating greater efficiencies in the listing process for the Exchange and the Commission.

The securities and financial instruments enumerated in proposed

¹⁵ See note 5, *supra*.

¹⁶ See, e.g., Application for exemptive relief (File No. 812–14405) and order granting exemptive relief applicable to the Precidian ETFs Trust under the 1940 Act (Investment Company Act Release No. 33477) (May 20, 2019).

¹⁷ For example, the ClearBridge Approval Order (see note 5, *supra*) relating to listing of shares of the ClearBridge Focus Value ETF states: “Pursuant to the Exemptive Order, the permissible investments include only the following instruments that trade on a U.S. exchange contemporaneously with the Shares: ETFs and exchange-traded notes, common stocks, preferred stocks, American depositary receipts, real estate investment trusts, commodity pools, metals trusts, currency trusts, and futures for which the reference asset the Fund may invest in directly or, in the case of an index future, based on an index of a type of asset that the Fund could invest in directly; as well as cash and cash equivalents (short-term U.S. Treasury securities, government money market funds and repurchase agreements).”

¹⁸ See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

¹⁹ 15 U.S.C. 78f(b).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ See notes 4–6, *supra*.

Commentary .01 (a)(1)–(10) to Rule 8.900–E are consistent with, and limited to, the “permissible investments” for series of Managed Portfolio Shares previously approved by the Commission for Exchange listing and trading, as described in the Approval Orders.²² The Exchange notes that all exchange-traded equity securities held by a series of Managed Portfolio Shares would be listed and traded on a national securities exchange in the United States. Futures contracts held by a series of Managed Portfolio Shares would be traded on a U.S. futures exchange.

With respect to the proposed amendment to Commentary .01(a)(10) relating to cash and cash equivalents, the enumerated cash equivalents—short-term U.S. Treasury securities, government money market funds, and repurchase agreements—also are included as cash equivalents for purposes of the generic listing criteria applicable to Managed Fund Shares in Commentary .01(c) to Rule 8.600–E. Such instruments are short-term, highly liquid, and of high credit quality, making them less susceptible than other asset classes both to price manipulation and volatility.²³

Quotation and last sale information for Managed Portfolio Shares and exchange-traded equities will be available via the Consolidated Tape Association high-speed line or from the exchange on which such securities trade. Price information for futures contracts is available from the exchange on which such futures trade and from major market data vendors. Intraday pricing information for cash equivalents will be available through subscription services and/or pricing services.

The proposed rule change is also designed to protect investors and the public interest because Managed Portfolio Shares listed and traded pursuant to Rule 8.601–E, including pursuant to the proposed portfolio standards, would continue to be subject to the full panoply of Exchange rules and procedures that currently govern the trading of equity securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Managed Portfolio Shares. In addition, the Exchange believes that the proposed portfolio standards for listing and trading Managed Portfolio Shares are reasonably designed to promote a fair and orderly market for such Managed Portfolio Shares. These proposed standards

would also work in conjunction with the existing initial and continued listing criteria related to surveillance procedures and trading halts.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because the Managed Portfolio Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 8.900–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in Managed Portfolio Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. FINRA, on behalf of the Exchange, or the regulatory staff of the Exchange, will communicate as needed regarding trading in Managed Portfolio Shares, other exchange-traded equity securities, and futures contracts with other markets that are members of the ISG. In addition, the Exchange may obtain information regarding trading in Managed Portfolio Shares from other markets that are members of the ISG, including all U.S. securities exchanges and futures exchanges on which the equity securities and futures contracts are traded.

The Exchange also believes that the proposed rule change would fulfill the intended objective of Rule 19b–4(e) under the Act by allowing Managed Portfolio Shares that satisfy the proposed listing standards to be listed and traded without separate Commission approval. However, as proposed, the Exchange would continue to file separate proposed rule changes before the listing and trading of Managed Portfolio Shares that do not satisfy the additional criteria described above.

Prior to listing pursuant to proposed amended Rule 8.900–E and Commentary .01 thereto, an issuer would be required to represent to the Exchange that it will advise the Exchange of any failure by a series of Managed Portfolio Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If a series of Managed Portfolio Shares is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

For these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,²⁴ 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 purposes of the Act. Instead, the Exchange believes that the proposed rule change would facilitate the listing and trading of additional types of Managed Portfolio Shares and result in a significantly more efficient process surrounding the listing and trading of Managed Portfolio Shares, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange believes that this would reduce the time frame for bringing Managed Portfolio Shares to market, thereby reducing the burdens on issuers and other market participants and promoting competition. In turn, the Exchange believes that the proposed change would make the process for listing Managed Portfolio Shares more competitive by applying uniform listing standards with respect to Managed Portfolio Shares.

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 such longer period 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, as modified by Amendment No. 1, is consistent with the Act. Comments may be submitted by any of the following methods:

²² See notes 5 and 17, *supra*.

²³ See note 18, *supra*.

²⁴ 15 U.S.C. 78f(b)(8).

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-NYSEArca-2020-84 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-NYSEArca-2020-84. 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-NYSEArca-2020-84 and should be submitted on or before November 3, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁵

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90100; File No. SR-OCC-2020-010]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Concerning the Commingling of Certain Non-Customer Margin Assets With Clearing Fund Contributions in the Options Clearing Corporation's Account at the Federal Reserve Bank of Chicago

October 6, 2020.

I. Introduction

On August 7, 2020, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change SR-OCC-2020-010 ("Proposed Rule Change") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4² thereunder to provide OCC with express authority to hold cash Clearing Fund contributions and certain non-customer cash margin assets in its account at the Federal Reserve Bank of Chicago at the same time.³ The Proposed Rule Change was published for public comment in the **Federal Register** on August 24, 2020.⁴ The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

Since March 15, 2016, OCC has maintained an account at the Federal Reserve Bank of Chicago to hold cash deposits from its Clearing Members to satisfy margin and Clearing Fund requirements.⁵ OCC's current rules restrict the manner in which OCC may hold Clearing Fund contributions and margin assets.⁶ As a result, OCC holds cash Clearing Fund contributions in its Federal Reserve Bank Account, but separately holds Clearing Members' cash margin assets in accounts with

commercial banks. To authorize OCC to commingle certain cash margin and cash Clearing Fund contributions, OCC proposes to amend its Rules 604 and 1002 as described below.

Current rules. OCC Rule 604(d) requires that certain cash margin assets of Clearing Members ("Specified Cash Margin Assets") must be deposited to the credit of OCC in an account or accounts,⁷ designated as Clearing Member margin accounts, with such banks, trust companies or other depositories as the Board of Directors may select. Rule 604(d) further prohibits OCC from commingling Specified Cash Margin Assets with OCC's funds of OCC or using such assets as working capital.

OCC Rule 1002(c) requires, among other things, that cash Clearing Fund contributions not otherwise invested shall be deposited by OCC in accounts with approved custodians, which include the Federal Reserve Bank of Chicago. Rule 1002(c) permits the commingling of Clearing Fund contributions from different Clearing Members.⁸ OCC currently holds cash Clearing Fund contributions in its Federal Reserve Bank Account.

Proposed Rule Change to OCC. OCC proposes to add language to Rule 604 to allow OCC to deposit Specified Cash Margin Assets in a Federal Reserve Bank Account not designated as a Clearing Member margin account. The proposed change would apply only to non-customer margin assets.⁹ OCC proposes further to add language to its Rules 604 and 1002 to allow OCC to commingle such assets and cash Clearing Fund contributions deposited in a Federal Reserve Bank Account.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that

⁷ OCC Rule 604(d) expressly excludes from these Specified Cash Margin Assets those funds that are: (i) Deposited in respect of a segregated futures account (which must be held in accordance with the provisions of Section 4d of the Commodity Exchange Act and regulations thereunder); (ii) invested by OCC pursuant to Rule 604(a); or (iii) credited by OCC to a liquidating settlement account pursuant to Chapter XI of OCC's Rules.

⁸ See OCC Rule 1002(c) available at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

⁹ See Notice of Filing, 85 FR at 52177 (stating that OCC proposes to add Interpretation and Policy .18 to Rule 604 to provide that, notwithstanding anything else in Rule 604, Specified Cash Margin Assets held by OCC as non-customer margin assets and deposited to the credit of OCC in its Federal Reserve Bank Account may be deposited in accounts that are not designated as Clearing Member margin accounts and may be commingled with cash Clearing Fund contributions.)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Notice of Filing *infra* note 4, 85 FR at 52176.

⁴ Securities Exchange Act Release No. 89590 (Aug. 18, 2020), 85 FR 52176 (Aug. 24, 2020) (File No. SR-OCC-2020-010) ("Notice of Filing").

⁵ See Federal Reserve Bank of Chicago authorization to provide accounts and services to Options Clearing Corporation and Chicago Mercantile Exchange, Inc., in accordance with the Dodd-Frank Act and Regulation HH, approved March 15, 2016 (<https://www.federalreserve.gov/releases/h2/20160319/h2.pdf>).

⁶ See OCC Rules at https://www.theocc.com/getmedia/9d3854cd-b782-450f-bcf7-33169b0576ce/occ_rules.pdf.

²⁵ 17 CFR 200.30-3(a)(12).