

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91273; File No. SR–CboeBYX–2021–006]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.13 (Order Execution and Routing), as Well as its Fee Schedule, To Delete References to the INET and RDOX Routing Options

March 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on March 1, 2021, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) 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 Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b–4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) proposes to amend Rule 11.13 (Order Execution and Routing), as well as its Fee Schedule, to delete references to the INET and RDOX routing options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend paragraphs (H), (J), and (L) under Exchange Rule 11.13(b)(3) to delete all references to the INET and RDOX routing options. The Exchange also proposes to delete all references to the INET and RDOX routing options from the BYX Fee Schedule, as provided [sic] fee codes J and D, respectively, and footnote 10. The Exchange intends to implement the proposed rule changes on March 1, 2021.

Exchange Rule 11.13(b)(3) provides for various routing options available on the Exchange. Specifically, Rule 11.13(b)(3)(J) provides for the INET routing option, under which an order checks the System⁵ for available shares and then is sent to Nasdaq. If shares remain unexecuted after routing, they are posted on the Nasdaq book, unless otherwise instructed by the User.⁶ Similarly, Exchange Rule 11.13(b)(3)(L) provides for the RDOX routing option, [sic] which an order checks the System for available shares and then is sent to the NYSE and can be re-routed by the NYSE. If shares remain unexecuted after routing, they are posted on the NYSE book, unless otherwise instructed by the User.

The Exchange has determined because few Users select the INET or RDOX routing options, the current demand does not warrant the infrastructure and ongoing maintenance expenses required to support the product. Therefore, the Exchange now proposes to delete INET and RDOX as a routing option as provided by Rule 11.13(b)(3)(J) and (L), respectively.

Given the proposed changes described above, the Exchange also proposes to amend Rule 11.13(b)(3)(H) to eliminate any reference to the INET and RDOX routing strategies. Specifically, Rule 11.13(b)(3)(H) provides for the Post to Away routing option, which routes the

remainder of a routed order to and posts such order on the order book of a destination on the System routing table⁷ as specified by the User, and lists the specific routing options for which the Post to Away routing option may be combined. Both INET and RDOX are listed under Rule 11.13(b)(3)(H) as routing options that may be combined with the Post to Away routing option; therefore, the Exchange is proposing to eliminate [sic] all such references to INET and RDOX in Rule 11.13(b)(3)(H).

As the Exchange is proposing to eliminate the INET and RDOX routing options from the BYX Rulebook, the Exchange also proposes to eliminate any such reference to those routing options on the BYX Fee Schedule. Specifically, the Exchange proposes to eliminate RDOX from the description of Fee Code D,⁸ and eliminate INET from the description of Fee Code J.⁹ Additionally, the Exchange proposes to delete references to both RDOX and INET in footnote 10 of the Fee Schedule.¹⁰

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with

⁷ The Exchange reserves the right to maintain a different System routing table for different routing options and to modify the System routing table at any time without notice. See Exchange Rule 11.13(b)(3).

⁸ Orders that yield fee code D are routed to NYSE using Destination Specific, RDOT or RDOX routing strategy, and are charged a fee of \$0.00280.

⁹ Orders that yield fee code J are routed to Nasdaq using Destination Specific or INET routing strategy, and are charged a fee of \$0.00290.

¹⁰ Footnote 10 of the Fee Schedule provides that executions that add liquidity in securities priced below \$1.00 with an RDOT, RDOX, INET, and Post to Away routing option are charged no fee and given no rebate.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b–4(f)(6).

⁵ The term “System” shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away. See Exchange Rule 1.5(aa).

⁶ The term “User” shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Exchange Rule 1.5(cc).

the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change to remove references to the RDOX and INET routing options will remove impediments to the mechanism of a free and open market, thereby protecting investors and the public interest. As stated, the Exchange has noted that few Users elect the RDOX and INET routing options and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing these routing options. The Exchange notes that routing through the Exchange is voluntary and alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route to other trading centers. In addition, neither the RDOX nor the INET routing options are core product offerings by the Exchange, nor is the Exchange required by the Act to offer such products. By removing references to routing options that will no longer be offered by the Exchange, the Exchange believes the proposed rule change will remove impediments to the mechanism of a free and open market and protect investors by providing investors with rules that accurately reflect routing options currently available on the Exchange. The Exchange does not believe that this proposal will permit unfair discrimination among customers, brokers, or dealers because the RDOX and INET routing options will no longer be available to all Users.

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 purposes of the Act. The proposed rule change to remove RDOX and INET is not designed to address any competitive issues but rather to delete the RDOX and INET routing options that are rarely used on the Exchange. As stated, the Exchange has noted that few Users elect the RDOX and INET routing options and has determined that the current demand does not warrant the infrastructure and ongoing maintenance expense required to support these products. Therefore, the Exchange is discontinuing these routing options. The Exchange notes that routing through the Exchange is voluntary and

alternative routing options offered by the Exchange as well as other methods remain available to Users that wish to route to other trading centers. In addition, neither the RDOX nor the INET routing options are core product offerings by the Exchange, nor is the Exchange required by the Act to offer such products.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.¹⁶

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁷ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would immediately eliminate rules and references that account for services the Exchange planned to discontinue on March 1, 2021, thereby avoiding potential investor confusion during the operative delay period. Based on the foregoing, the Commission believes the waiver of the operative delay is

consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁹

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.²⁰

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-CboeBYX-2021-006 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-CboeBYX-2021-006. 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

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

¹⁹ 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).

²⁰ 15 U.S.C. 78s(b)(3)(C).

¹³ *Id.*

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-CboeBYX-2021-006 and should be submitted on or before April 1, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91266; File No. SR-NYSEArca-2020-104]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Stance Equity ESG Large Cap Core ETF Under NYSE Arca Rule 8.601-E

March 5, 2021.

I. Introduction

On November 30, 2020, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² a proposed rule change to list and trade shares (“Shares”) of Stance Equity ESG Large Cap Core ETF (“Fund”) under NYSE Arca Rule 8.601-E (Active Proxy Portfolio Shares). The proposed rule change was published for comment in the *Federal Register* on December 21, 2020.³

On January 22, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to

determine whether to disapprove the proposed rule change.⁵ On January 22, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.⁶ On March 4, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1.⁷ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 2.

II. Summary of the Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 2⁸

NYSE Arca Rule 8.900-E(b)(1) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange; thus, the Exchange submitted this proposal to list and trade the

⁵ See Securities Exchange Act Release No. 90974, 86 FR 7446 (Jan. 28, 2021). The Commission designated March 21, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ Amendment No. 1 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2020-104/srnysearca2020104-8276588-228099.pdf>.

⁷ In Amendment No. 2, the Exchange: (1) Updated the status of the application for exemptive relief filed by the Issuer (as defined below); (2) changed the distributor and principal underwriter of the Fund; (3) stated that, in connection with the creation and redemption of Active Proxy Portfolio Shares, such creation or redemption may be exchanged for a Proxy Portfolio (as defined below) and/or cash; (4) represented that the Proxy Portfolio will not include any asset that is ineligible to be in the Actual Portfolio (as defined below) of the Fund; (5) stated that the Fund’s holdings will conform to the permissible investments as set forth in the Exemptive Order (as defined below) and that the holdings will be consistent with all requirements in the Exemptive Order; (6) supplemented its description of the Fund’s investment objective; (7) revised the description of the availability of pricing information; (8) described that a creation unit will generally consist of 5,000 shares; (9) supplemented its description of the disclosures about the Proxy Portfolio that the Fund will publish on its website each business day; (10) stated that the Exchange will obtain a representation from the Issuer that the net asset value per Share of the Fund will be calculated daily and that the net asset value, Portfolio Reference Basket (as defined below), and the Actual Portfolio (as defined below) for the Fund will be made available to all market participants at the same time; and (11) made conforming and technical changes. Because Amendment No. 2 does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 is available on the Commission’s website at <https://www.sec.gov/comments/sr-nysearca-2020-104/srnysearca2020104.htm>.

⁸ Additional information regarding the Fund, the Issuer (as defined below), and the Shares can be found in Amendment No. 2, *supra* note 7, and Registration Statement, *supra* note 9.

Shares.⁹ The Shares of the Fund will be issued by The RBB Fund, Inc. (“Issuer”), a corporation organized under the laws of the State of Maryland and registered with the Commission as an open-end management investment company.¹⁰ Red Gate Advisers, LLC (“Adviser”) will be the investment adviser to the Fund. Stance Capital, LLC and Vident Investment Advisory, LLC will be the sub-advisers (“Sub-Advisers”) for the Fund. U.S. Bank, N.A. will serve as the Fund’s custodian, U.S. Bancorp Fund Services, LLC will serve as the Fund’s transfer agent, and Vigilant Distributors, LLC will act as the distributor and principal underwriter for the Fund.

⁹ As defined in Rule 8.601-E(c)(1), the term “Active Proxy Portfolio Share” means a security that (a) is issued by an investment company (“Investment Company”) registered under the Investment Company Act of 1940 (“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; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 8.601-E(c)(2) provides that the term “Actual Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601-E(c)(3) provides that the term “Proxy Portfolio” means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.

¹⁰ The Issuer is registered under the 1940 Act. On November 23, 2020, the Issuer filed a registration statement on Form N-1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 033-20827 and 811-05518) (“Registration Statement”). The Issuer 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 (File No. 812-15165), dated September 28, 2020 (“Application”). The Issuer filed an amended Application on December 10, 2020, and a second amended Application on January 15, 2021. On February 26, 2021, the Commission issued an order (“Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application (Investment Company Act Release No. 34215, February 26, 2021). The Exchange states that investments made by the Fund will comply with the conditions set forth in the Application and the Exemptive Order. According to the Exchange, the description of the operation of the Fund in the proposal is based, in part, on the Registration Statement and the Application.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90665 (Dec. 15, 2020), 85 FR 83129.

⁴ 15 U.S.C. 78s(b)(2).