

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83759; File No. SR–NYSEArca–2018–54]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Amend Commentary .01 to NYSE Arca Rule 8.600–E Relating to Certain Generic Listing Standards for Managed Fund Shares

August 1, 2018.

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 July 18, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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. 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 Commentary .01 to NYSE Arca Rule 8.600–E relating to certain generic listing standards for Managed Fund Shares. 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

Commentary .01 to NYSE Arca Rule 8.600–E sets forth generic listing

standards for listing and trading of Managed Fund Shares on the Exchange.⁴ The Exchange proposes to amend certain provisions in Commentary .01, as described below.⁵

Proposed Amendments to Commentary .01(a) to Rule 8.600–E

Commentary .01(a) to NYSE Arca Rule 8.600–E sets forth generic standards applicable to equity securities included in the portfolio of a series of Managed Fund Shares.⁶ Commentary .01(a)(2) (“Non-U.S. Component Stocks”) sets forth criteria to be met initially and on a continuing basis by component stocks of the equity portion of a portfolio that are Non-U.S. Component Stocks.⁷

Commentary .01(a)(2)(A) provides that Non-U.S. Component Stocks each shall have a minimum market value of at least \$100 million. Commentary .01(a)(2)(B) provides that Non-U.S. Component Stocks each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.

The Exchange proposes to amend Commentary .01(a)(2)(A) to provide that

⁴ A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (the “1940 Act”) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

⁵ The Commission approved the generic listing standards in Commentary .01 to NYSE Arca Rule 8.600–E in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Equities Rule 8.600 to Adopt Generic Listing Standards for Managed Fund Shares) (“Approval Order”).

⁶ For purposes of Commentary .01(a) to Rule 8.600–E, equity securities include the following: U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Non-U.S. Component Stocks (as described in Rule 5.2–E(j)(3)); Derivative Securities Products (i.e., Investment Company Units and securities described in Section 2 of Rule 8–E); and Index-Linked Securities that qualify for Exchange listing and trading under Rule 5.2–E(j)(6).

⁷ NYSE Arca Rule 5.2–E(j)(3) provides that the term “Non-US Component Stock” shall mean an equity security that is not registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934 and that is issued by an entity that (a) is not organized, domiciled or incorporated in the United States, and (b) is an operating company (including Real Estate Investment Trusts (REITs) and income trusts, but excluding investment trusts, unit trusts, mutual funds, and derivatives).

Non-U.S. Component Stocks that in the aggregate account for at least 90% of the weight of the Non-U.S. Component Stocks of the equity portion of a portfolio each shall have a minimum market value of at least \$100 million. In addition, the Exchange proposes to amend Commentary .01(a)(2)(B) to provide that Non-U.S. Component Stocks that in the aggregate account for at least 70% of the weight of the Non-U.S. Component Stocks of the equity portion of a portfolio each shall have a minimum global monthly trading volume of 250,000 shares, or minimum global notional volume traded per month of \$25,000,000, averaged over the last six months.

The proposed amendments are comparable to the current numerical requirements in Commentary .01(a)(B)(1) and Commentary .01(a)(B)(2) to NYSE Arca Rule 5.2–E(j)(3) applicable to component stocks in an index or portfolio underlying Investment Company Units. The Exchange notes that, in originally approving the generic listing criteria in Commentary .01(a)(B) to NYSE Arca Rule 5.2–E(j)(3) applicable to indexes that include only non-U.S. Component Stocks or both U.S. and Non-U.S. Component Stocks in an index or portfolio underlying a series of Investment Company Units, the Commission stated that “[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.”⁸

Like the requirements applicable to an index or portfolio underlying

⁸ See Securities Exchange Act Release No. 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (Notice of Filing of Proposed Rule Change and Amendments No. 1, 2, 3, and 4 Thereto and Order Granting Accelerated Approval of the Proposed Rule Change as Modified by Amendments No. 2 and 4 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Described in Exchange Rules Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities). See also Securities Exchange Act Release Nos. 54739 (November 9, 2006), 71 FR 61811 [sic] (October 19 [sic], 2006) (SR–Amex–2006–78) (Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Relating to Generic Listing Standards for Series of Portfolio Depositary Receipts and Index Fund Shares Based on International or Global Indexes); 55113 (January 17, 2007), 72 FR 3179 (January 24, 2007) (SR–NYSE–2006–101) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendments No. 1 and 2 Thereto Adopting Generic Listing Standards for Exchange-Traded Funds Based on International or Global Indexes or Indexes Previously Approved by the Commission as Underlying Benchmarks for Derivative Securities).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

Investment Company Units noted above, the proposed amendments to Commentary .01(a)(2)(A) and (B) would subject a substantial portion of a fund's holdings in Non-U.S. Component Stocks to specified minimum liquidity and market value requirements. Such holdings also will continue to be subject to the weighting and diversification requirements of Commentary .01(a)(2)(C) and (D), which prevent any stock or small group of stocks from dominating a fund's portfolio.⁹ The proposed amendments to Commentary .01(a)(2) to Rule 8.600–E would provide additional flexibility to series of Managed Fund Shares investing in Non-U.S. Component Stocks while continuing to apply substantial minimum criteria relating to liquidity, market capitalization and diversification.

Proposed Amendment to Commentary .01(b)(5) to Rule 8.600–E

Commentary .01(b) to NYSE Arca Rule 8.600–E sets forth generic standards applicable to fixed income securities included in the portfolio of a series of Managed Fund Shares.¹⁰ Commentary .01(b)(5) provides that non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities (“ABS”) components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the fixed income portion of the portfolio. The Exchange proposes to amend Commentary .01(b)(5) by deleting the words “fixed income portion” to provide that such 20% limitation would apply to the entire portfolio rather than to only the fixed

income portion of the portfolio. Thus, Commentary .01(b)(5) would provide that non-agency, non-GSE and privately-issued mortgage-related and other ABS components of a portfolio shall not account, in the aggregate, for more than 20% of the weight of the portfolio.

This Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's liquidity procedures as adopted by a fund's board of directors. The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued asset-backed and mortgage-backed securities (“MBS”).¹¹ In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.¹² Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio in

Commentary .01(b)(5) to a fund's total assets.

Proposed Amendment to Commentary .01(a)(3) to Rule 8.600–E

The Exchange further proposes to add new Commentary .01(a)(3) to NYSE Arca Rule 8.600–E to provide that the portfolio of a series of Managed Fund Shares may include non-exchange-traded open-end management investment company securities, which securities shall be excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

A fund's investment in such securities, which are registered under the 1940 Act, may be utilized, for example, to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes.¹³ Such investments may include mutual funds that invest principally in securities and financial instruments that help the Fund meet its investment objective and/or to equitize cash in the short term.¹⁴ Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the value of securities and financial instruments the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600–E exclude certain “Derivative Securities Products” that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2–E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100–E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600–E)).¹⁵ In its

⁹ Commentary .01(a)(2)(C) provides that the most heavily weighted Non-U.S. Component stock shall not exceed 25% of the equity weight of the portfolio, and, to the extent applicable, the five most heavily weighted Non-U.S. Component Stocks shall not exceed 60% of the equity weight of the portfolio.

Commentary .01(a)(2)(D) provides that, where the equity portion of the portfolio includes Non-U.S. Component Stocks, the equity portion of the portfolio shall include a minimum of 20 component stocks; provided, however, that there shall be no minimum number of component stocks if (i) one or more series of Derivative Securities Products or Index-Linked Securities constitute, at least in part, components underlying a series of Managed Fund Shares, or (ii) one or more series of Derivative Securities Products or Index-Linked Securities account for 100% of the equity weight of the portfolio of a series of Managed Fund Shares.

¹⁰ Commentary .01(b) provides that fixed income securities are debt securities that are notes, bonds, debentures or evidence of indebtedness that include, but are not limited to, U.S. Department of Treasury securities (“Treasury Securities”), government-sponsored entity securities (“GSE Securities”), municipal securities, trust preferred securities, supranational debt and debt of a foreign country or a subdivision thereof, investment grade and high yield corporate debt, bank loans, mortgage and asset backed securities, and commercial paper.

¹¹ See, e.g., Securities Exchange Act Release Nos. 80946 (June 15, 2017) 82 FR 28126 (June 20, 2017) (SR–NASDAQ–2017–039) (permitting the Guggenheim Limited Duration ETF to invest up to 20% of its total assets in privately-issued, non-agency and non-GSE ABS and MBS); 76412 (November 10, 2015), 80 FR 71880 (November 17, 2015) (SR–NYSEArca–2015–111) (permitting the RiverFront Strategic Income Fund to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74814 (April 27, 2015), 80 FR 24986 (May 1, 2015) (SR–NYSEArca–2014–017 [sic]) (permitting the Guggenheim Enhanced Short Duration ETF to invest up to 20% of its assets in privately-issued, non-agency and non-GSE ABS and MBS); 74109 (January 21, 2015), 80 FR 4327 (January 27, 2015) (SR–NYSEArca–2014–134) (permitting the IQ Wilshire Alternative Strategies ETF to invest up to 20% of its total assets in MSB [sic] and other ABS, without any limit on the type of such MBS and ABS).

¹² See Securities Exchange Act Release No. 83319 (May 24, 2018) (SR–NYSEArca–2018–15) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Continue Listing and Trading Shares of the PGIM Ultra Short Bond ETF Under NYSE Arca Rule 8.600–E).

¹³ For purposes of Commentary .01(a)(3), non-exchange-traded open-end management investment company securities do not include money market funds, which are cash equivalents under Commentary .01(c) to Rule 8.600–E and for which there is no limitation in the percentage of the portfolio invested in such securities.

¹⁴ The Commission has previously approved proposed rule changes under Section 19(b) of the Act for series of Managed Fund Shares that may invest in non-exchange traded investment company securities to the extent permitted by Section 12(d)(1) of the 1940 Act and the rules thereunder. See, e.g., Securities Exchange Act Release No. 78414 (July 26, 2016), 81 FR 50576 (August 1, 2016) (SR–NYSEArca–2016–79) (order approving listing and trading of shares of the Virtus Japan Alpha ETF under NYSE Arca Rule 8.600–E).

¹⁵ The Commission initially approved the Exchange's proposed rule change to exclude “Derivative Securities Products” (i.e., Investment Company Units and securities described in Section

2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600–E), the Commission stated that “based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations.” The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (*e.g.*, market capitalization, trading volume, or portfolio criteria) in Commentary .01(A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-traded securities (*i.e.*, U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-

end investment companies hold multiple individual securities as disclosed publicly in accordance with the 1940 Act.

The Exchange notes that the Commission has previously approved listing and trading of an issue of Managed Fund Shares that may invest in equity securities that are non-exchange-traded securities of other open-end investment company securities notwithstanding that the fund would not meet the requirements of Commentary .01(a)(1)(A) through (E) to Rule 8.600–E with respect to such fund’s investments in such securities.¹⁶

The Exchange, therefore, believes it is appropriate to exclude non-exchange-traded open-end management investment company securities from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

The Exchange believes the proposed amendments would provide issuers of Managed Fund Shares with additional investment choices for fund portfolios for issues permitted to list and trade on the Exchange pursuant to the Rule 19b–4(e), which would enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Sections [sic] 6(b)(5) of the Act,¹⁸ in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange has in place surveillance procedures that are adequate to properly monitor trading in series of Managed Fund Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange notes that the Exchange or Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange,

or both, would communicate as needed regarding trading in Managed Fund Shares with other markets and other entities that are members of the Intermarket Surveillance Group, and the Exchange or FINRA, on behalf of the Exchange, or both, could obtain trading information regarding trading in Managed Fund Shares from such markets and other entities. In addition, the Exchange could obtain information regarding trading in Managed Fund Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

With respect to the proposed amendment to Commentary .01(a)(2), the proposed amendments are comparable to the current numerical requirements in Commentary .01(a)(B)(1) and Commentary .01(a)(B)(2) to NYSE Arca Rule 5.2–E(j)(3) applicable to component stocks in an index or portfolio underlying Investment Company Units. The Exchange notes that, in originally approving the generic listing criteria in Commentary .01(a)(B) to NYSE Arca Rule 5.2–E(j)(3) applicable to indexes that include only non-U.S. Component Stocks or both U.S. and Non-U.S. Component Stocks in an index or portfolio underlying a series of Investment Company Units, the Commission stated that “[t]hese requirements are designed, among other things, to require that components of an index or portfolio underlying an ETF are adequately capitalized and sufficiently liquid, and that no one stock dominates the index.”¹⁹

Like the requirements applicable to an index or portfolio underlying Investment Company Units noted above, the proposed amendments to Commentary .01(a)(2)(A) and (B) would subject a substantial portion of a fund’s holdings in Non-U.S. Component Stocks to specified minimum liquidity and market value requirements. Such holdings also will continue to be subject to the weighting and diversification requirements of Commentary .01(a)(2)(C) and (D), which prevent any stock or small group of stocks from dominating a fund’s portfolio. The proposed amendments to Commentary .01(a)(2) to Rule 8.600–E would provide additional flexibility to series of Managed Fund Shares investing in Non-U.S. Component Stocks while continuing to apply substantial minimum criteria relating to liquidity, market capitalization and diversification.

2 of Rule 8) and “Index-Linked Securities (as described in Rule 5.2–E(j)(6)) from Commentary .01(a)(A) (1) through (4) to Rule 5.2–E(j)(3) in Securities Exchange Act Release No. 57751 (May 1, 2008), 73 FR 25818 (May 7, 2008) (SR–NYSEArca–2008–29) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units) (“2008 Approval Order”). See also Securities Exchange Act Release No. 57561 (March 26, 2008), 73 FR 17390 (April 1, 2008) (Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto to Amend the Eligibility Criteria for Components of an Index Underlying Investment Company Units). The Commission subsequently approved generic criteria applicable to listing and trading of Managed Fund Shares, including exclusions for Derivative Securities Products and Index-Linked Securities in Commentary .01(a)(1)(A) through (D), in Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 7 Thereto, Amending NYSE Arca Rule 8.600–E To Adopt Generic Listing Standards for Managed Fund Shares). See also Amendment No. 7 to SR–NYSEArca–2015–110, available at <https://www.sec.gov/comments/sr-nysearca-2015-110/nysearca2015110-9.pdf>.

¹⁶ See note 12, *supra*.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ See note 8, *supra*.

With respect to the proposed amendment to Commentary .01(b)(5), the Exchange believes this amendment is appropriate because a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS may provide a fund with benefits associated with increased diversification, as such investments may be less correlated to interest rates than many other fixed income securities. In addition, a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other ABS will be subject to a fund's liquidity procedures as adopted by a fund's board of directors.

The Exchange notes that the Commission has previously approved the listing of actively managed exchange-traded funds that can invest 20% of their total assets in non-U.S. Government, non-agency, non-GSE and other privately issued asset-backed and MBS. In addition, the Commission has previously approved listing and trading of shares of an issue of Managed Fund Shares where such fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued ABS will, in the aggregate, not exceed more than 20% of the total assets of the fund, rather than the weight of the fixed income portion of the fund's portfolio.²⁰ Therefore, the Exchange believes it is appropriate to apply the 20% limitation to a fund's investment in non-agency, non-GSE and privately-issued mortgage-related and other asset-backed securities components of a portfolio in Commentary .01(b)(5) to a fund's total assets.

The Exchange further proposes to add new Commentary .01(a)(3) to NYSE Arca Rule 8.600-E to provide that the equity portion of a portfolio may include non-exchange-traded open-end management investment company securities, which securities shall be excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1). A fund's investment in such securities may be utilized, for example, to obtain income on short-term cash balances while awaiting attractive investment opportunities, to provide liquidity in preparation for anticipated redemptions or for defensive purposes. Such investments may include mutual funds that invest principally in securities and financial instruments that help the Fund meet its investment objective and/or to equitize cash in the short term. Because such securities must satisfy applicable 1940 Act diversification requirements, and have a net asset value based on the

value of securities and financial instruments the investment company holds, it is both unnecessary and inappropriate to apply to such investment company securities the criteria in Commentary .01(a)(1). For the same reasons, such investment company securities are appropriately excluded from the equity portion of the portfolio for purposes of meeting the criteria in Commentary .01(a)(1).

The Exchange notes that Commentary .01(a)(1)(A) through (D) to Rule 8.600-E exclude certain "Derivative Securities Products" that are exchange-traded investment company securities, including Investment Company Units (as described in NYSE Arca Rule 5.2-E(j)(3)), Portfolio Depositary Receipts (as described in NYSE Arca Rule 8.100-E)) and Managed Fund Shares (as described in NYSE Arca Rule 8.600-E)). In its 2008 Approval Order approving amendments to Commentary .01(a) to Rule 5.2(j)(3) to exclude Derivative Securities Products from certain provisions of Commentary .01(a) (which exclusions are similar to those in Commentary .01(a)(1) to Rule 8.600-E), the Commission stated that "based on the trading characteristics of Derivative Securities Products, it may be difficult for component Derivative Securities Products to satisfy certain quantitative index criteria, such as the minimum market value and trading volume limitations." The Exchange notes that it would be difficult or impossible to apply to mutual fund shares certain of the generic quantitative criteria (e.g., market capitalization, trading volume, or portfolio criteria) in Commentary .01(A) through (D) applicable to U.S. Component Stocks. For example, the requirements for U.S. Component Stocks in Commentary .01(a)(1)(B) that there be minimum monthly trading volume of 250,000 shares, or minimum notional volume traded per month of \$25,000,000, averaged over the last six months are tailored to exchange-traded securities (i.e., U.S. Component Stocks) and not to mutual fund shares, which do not trade in the secondary market and for which no such volume information is reported. In addition, Commentary .01(a)(1)(A) relating to minimum market value of portfolio component stocks, Commentary .01(a)(1)(C) relating to weighting of portfolio component stocks, and Commentary .01(a)(1)(D) relating to minimum number of portfolio components are not appropriately applied to open-end management investment company securities; open-end investment companies hold multiple individual securities as

disclosed publicly in accordance with the 1940 Act.

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 in that it will facilitate the listing and trading of additional types of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

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

In accordance with Section 6(b)(8) of the Act,²¹ 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 would permit Exchange listing and trading under Rule 19b-4(e) of additional types of Managed Fund Shares, which would enhance competition among market participants, to the benefit of investors and the marketplace.

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

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 within 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 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

²¹ 15 U.S.C. 78f(b)(8).

²⁰ See note 11 [sic], *supra*.

• Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2018-54 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-2018-54. 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-2018-54 and should be submitted on or before August 28, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Robert W. Errett,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83758; File No. SR-CboeBYX-2018-015]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period for the Exchange's Retail Price Improvement Program

August 1, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 30, 2018, Cboe BYX Exchange, Inc. (the "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 has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6)(iii) thereunder,⁴ which renders it effective upon filing with the Commission. 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 filed a proposal to extend the pilot period for the Exchange's Retail Price Improvement Program, which is currently scheduled to expire on July 31, 2018, until the earlier of approval of the filing to make the Program permanent or December 31, 2018.

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.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 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 parts of such statements.

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

1. Purpose

The purpose of the proposed rule change is to extend the pilot period for the Exchange's Retail Price Improvement Program (the "Program"), which is set to expire on July 31, 2018, until the earlier of approval of the filing to make the Program permanent or December 31, 2018.⁵

Background

In November 2012, the Commission approved the Program on a pilot basis.⁶ The Program is designed to attract retail order flow to the Exchange, and allows such order flow to receive potential price improvement. The Program is currently limited to trades occurring at prices equal to or greater than \$1.00 per share. Under the Program, all Exchange Users⁷ are permitted to provide potential price improvement for Retail Orders⁸ in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation ("Protected NBB") or the national best offer that is a Protected Quotation ("Protected NBO", and together with the Protected NBB, the "Protected NBBO").⁹

⁵ The Exchange has filed to make the pilot program permanent. See Cboe-BYX-2018-014 (pending publication).

⁶ See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BYX-2012-019).

⁷ A "User" is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

⁸ A "Retail Order" is defined in Rule 11.24(a)(2) as an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any computerized methodology. See Rule 11.24(a)(2).

⁹ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid ("NBB") and national best offer ("NBO", together with the NBB, the "NBBO") will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6)(iii).

²² 17 CFR 200.30-3(a)(12).