

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101190; File No. SR-CboeBZX-2024-089)

September 25, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 14.11(e)(10) (Managed Trust Securities) and to List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF Under Amended Rule 14.11(e)(10)

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 September 16, 2024, Cboe BZX Exchange, Inc. (“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 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 BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change to (1) amend Exchange Rule 14.11(e)(10) to add certain financial instruments that an issue of Managed Trust Securities may hold; and (2) list and trade shares of the Dynamic Short Short-Term Volatility Futures ETF (the “Fund”), a series of Dynamic Shares Trust (the “Trust”), under Rule 14.11(e)(10) (Managed Trust Securities), which is currently listed on NYSE Arca, Inc. (“Arca”).

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).

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

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

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

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

1. Purpose

Exchange Rule 14.11(e)(10) permits the trading of Managed Trust Securities either by listing or pursuant to unlisted trading privileges (“UTP”).⁵ The Exchange proposes to amend Rule 14.11(e)(10)(C)(i) to, among other things, permit the use of exchange-traded futures contracts involving commodity indices, currency indices, Cboe Volatility Index (VIX), or the EURO STOXX 50 Volatility Index (VSTOXX), permit the use of swaps on stock indices, fixed income indices, commodity indices, the VIX, VSTOXX, commodities, currencies, currency indices, or interest rates,

⁵ The term “Managed Trust Securities” as used in the Rules shall, unless the context otherwise requires, mean a security that is registered under the Securities Act of 1933, as amended, (a) is issued by a trust (“Trust”) that (1) is a commodity pool as defined in the Commodity Exchange Act and regulations thereunder, and that is managed by a commodity pool operator registered with the Commodity Futures Trading Commission, and (2) holds long and/or short positions in exchange-traded futures contracts and/or certain currency forward contracts selected by the Trust’s advisor consistent with the Trust’s investment objectives, which will only include exchange-traded futures contracts involving commodities, currencies, stock indices, fixed income indices, interest rates and sovereign, private and mortgage or asset backed debt instruments, and/or forward contracts on specified currencies, each as disclosed in the Trust’s prospectus as such may be amended from time to time; and (b) is issued and redeemed continuously in specified aggregate amounts at the next applicable net asset value. See Exchange Rule 14.11(e)(10)(C)(i).

and to permit the trust to hold cash and cash equivalents.⁶ The Exchange also proposes to list and trade Shares of the Dynamic Short Short-Term Volatility Futures ETF (the “Fund”), under Rule 14.11(e)(10), as proposed to be amended, which governs the listing and trading of Managed Trust Securities on the Exchange.⁷ The Exchanges notes that the listing and trading of the Shares has previously been approved by the Commission and are currently listed on NYSE Arca.⁸ This proposal to list and trade Shares of the Fund is substantively identical to the Prior Release and the issuer represents that all material representations contained within the Prior Release remain true. Further, the Fund is already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(j).

Managed Trust Securities

The Exchange proposes to modify Exchange Rule 14.11(e)(10)(C)(i) to substantively conform to Arca Rule 8.700(E)[sic](c)(1). Thus, the proposed changes to Rule 14.11(e)(10)(C)(i) would make the Exchange Rule substantively identical to NYSE Arca Rule 8.700-E(c)(1).

⁶ Another exchange rule similarly provides for a series of Managed Trust Securities to hold such instruments. See NYSE Arca Rule 8.700-E. Managed Trust Securities. For purposes of the proposed amendment to Exchange Rule 14.11(e)(10)(C)(i), cash and cash equivalents means short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds

⁷ The Commission approved BZX Rule 14.11(e)(10) in Securities Exchange Act Release No. 70250 (August 23, 2013), 78 FR 53510 (August 29, 2013) (SR-BATS-2013-038).

⁸ See Securities Exchange Act Nos. 86714 (August 20, 2019) 84 FR 44642 (August 26, 2019) (SR-NYSEArca-2019-55) (Notice of Filing of Proposed Rule Change To Amend NYSE Arca Rule 8.700-E and To List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF) (the “Prior Proposal”); 87223 (October 4, 2019) 84 FR 54707 (October 10, 2019) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 8.700-E and To List and Trade Shares of the Dynamic Short Short-Term Volatility Futures ETF) (the “Approval Order” and together with the Prior Proposal, the “Prior Release”).

Dynamic Short Short-Term Volatility Futures ETF

The Exchange proposes to list and trade the Shares of the Fund under proposed amended Rule 14.11(e)(10). Dynamic Shares LLC will serve as the Trust’s sponsor (“Sponsor”) and will serve as its commodity pool operator. Wilmington Trust Company is the sole “Trustee” of the Trust. The Nottingham Company will be the “Administrator” for the Fund. Nottingham Shareholder Services, LLC will serve as the “Transfer Agent” for the Fund for “authorized participants.” Capital Investment Group, Inc. will serve as the “Distributor” for the Fund.

The Sponsor is a commodity pool operator and is not registered or affiliated with a broker-dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Disclosed Portfolio (as defined in Exchange Rule 14.11(e)(10)(C)(ii)), and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

According to the Registration Statement,⁹ the Fund will seek to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market. Such exposure will be for one full trading day. The Fund will seek to achieve its investment objective,

⁹ On April 25, 2024, the Trust filed with the Commission an amended registration statement on Form S-1 under the Securities Act of 1933 relating to the Trust (File No. 333- 277681) (“Registration Statement”). The description of the operation of the Trust herein is based, in part, on the Prior Release and the Registration Statement.

under normal market conditions,¹⁰ by obtaining investment exposure to an actively managed portfolio of short positions in futures on the VIX Index¹¹ (“VIX Futures”) with monthly expirations.

The Fund expects to primarily take short positions in VIX Futures by shorting the next two near term VIX Futures and rolling the nearest month VIX Futures to the next month on a daily basis. As such, the Fund expects to have a constant one-month rolling short position in first and second month VIX Futures.

The Fund also may hold cash and cash equivalents, including U.S. Treasury securities.¹²

The Fund will seek to dynamically manage its notional exposure to VIX Futures. For instance, when the VIX Index is below its historical average, the Fund’s notional exposure will be lower than a traditional short VIX short term futures ETF, which may maintain a fixed notional exposure every day.

When the VIX Index is going up, the Fund will gradually increase its notional exposure, up to a ceiling of -0.5 times its net asset value (“NAV”). The Fund expects that its notional exposure will not exceed -0.5 times its NAV, but that its notional exposure may exceed -0.5 times its NAV during intraday trading before recalibration (as described further below).

The Fund will be actively managed and is not benchmarked to the VIX Index. As such, according to the Registration Statement, the Fund can be expected to perform very differently from the inverse of the VIX Index. The Fund does not seek to track the performance of the VIX Index or

¹⁰ The term “normal market conditions” is defined in Exchange Rule 14.11(i)(3)(D).

¹¹ The “VIX Index” refers to the Cboe Volatility Index.

¹² For purposes of this filing, cash equivalents are the following short-term instruments: (i) U.S. Government securities, including bills, notes and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers' acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

the S&P 500® and can be expected to perform very differently from the VIX Index over all periods of time.

According to the Registration Statement, the Fund will experience positive or negative performance based on changes in the implied level of future market volatility to the extent these changes are reflected in the price of VIX Futures. The Fund generally will experience positive performance, before accounting for fees and expenses, to the extent that the implied level of future volatility, as reflected by the value of the Fund's short position in VIX Futures, decreases. Similarly, the Fund generally will experience negative performance, before accounting for fees and expenses, to the extent that the implied level of future volatility increases.

According to the Registration Statement, at the close of each trading day, the Fund expects to recalibrate its notional exposure value upon the change of the VIX Index and contango on that day.¹³ The Fund expects its notional exposure to range from -0.1 to -0.5 after each calibration. Movements of the VIX Futures during the day will affect whether the Fund's portfolio needs to be repositioned. For example, if the levels of the VIX Futures have risen on a given day, net assets of the Fund should fall. As a result of the calibration, the Fund's inverse exposure will generally increase to a level not beyond -0.5. Conversely, if the levels of the VIX Futures have fallen on a

¹³ According to the Registration Statement, the contractual obligations of a buyer or seller holding a futures contract to expiration may generally be satisfied by taking or making physical delivery of the underlying reference asset or settling in cash as designated in the contract specifications. Alternatively, futures contracts may be closed out prior to expiration by making an offsetting sale or purchase of an identical futures contract on the same or linked exchange before the designated date of delivery. Once this date is reached, the futures contract "expires." As the futures contracts held by the Fund near expiration, they are generally closed out and replaced by contracts with a later expiration. This process is referred to as "rolling." When the market for these contracts is such that the prices are higher in the more distant delivery months than in the nearer delivery months, the sale during the course of the "rolling process" of the more nearby contract would take place at a price that is lower than the price of the more distant contract. This pattern of higher future prices for longer expiration futures contracts is often referred to as "contango." Alternatively, when the market for these contracts is such that the prices are higher in the nearer months than in the more distant months, the sale during the course of the "rolling process" of the more nearby contract would take place at a price that is higher than the price of the more distant contract. This pattern of higher future prices of shorter expiration futures contracts is referred to as "backwardation."

given day, net assets of the Fund should rise. As a result of the calibration, the Fund's inverse exposure will generally decrease to as low as -0.1.

In seeking to achieve the Fund's investment objective, the Sponsor uses a proprietary algorithm, which learns from VIX Futures historical prices and contango trend, to optimize VIX Futures trading risks and returns. The algorithm starts with a relatively low notional exposure (-0.1 to -0.15) and recalibrates its notional exposure upon the change of price and contango of VIX Futures. The Sponsor expects the algorithm to slightly increase the Fund's notional exposure when the price of VIX Futures go up to a level not beyond -0.5, and, when the price of VIX Futures goes down, the Sponsor expects the algorithm to decrease the Fund's notional exposure to lower levels to prepare for potential upcoming spikes in the price of VIX Futures. In the event that the Fund's notional exposure has already reached -0.5 and the price of VIX Futures increases, the Fund expects to maintain its notional exposure at -0.5 at the close of each trading day. Conversely, if the price of VIX Futures decreases when the Fund's notional exposure is below -0.1, the Fund expects to maintain its notional exposure at -0.1 when calibrating its notional exposure.

According to the Registration Statement, the pursuit of the Fund's daily investment objective means that the Fund's return for a period longer than a full trading day will be the product of the series of daily returns, with daily repositioned exposure, for each trading day during the relevant period. As a consequence, the return for investors that invest for periods less than a full trading day or for a period different than a trading day will not be the product of the return of the Fund's stated daily inverse investment objective.

Purchases and Redemptions of Creation Units

Except for the creation unit size, all representations pertaining to the purchases and redemptions of creation units are identical to those in the Prior Release. Specifically, the Fund will

create and redeem Shares from time to time in one or more creation units. A creation unit is a block of 10,000 Shares.

Net Asset Value

Everything stated in the Prior Release pertaining to the NAV per Share of the Fund will remain true and in effect.

*Intraday Indicative Value (“IIV”)*¹⁴

Everything stated in the Prior Release pertaining to the IIV will remain true and in effect.

Availability of Information

The Trust’s website, www.dynamicsharesetf.com, which will be publicly accessible at no charge, will contain the following information: (a) the daily NAV of the Trust, the daily NAV per Share, the prior Business Day’s NAV per Share, the reported daily closing price and the reported daily trading volume; (b) the daily composition of the Disclosed Portfolio, as defined in Exchange Rule 14.11(e)(10)(C)(ii); (c) the midpoint of the bid-ask price as of the time the NAV per Share is calculated (the “Bid-Ask Price”); (d) the calculation of the premium or discount of such price against such NAV per Share; (e) data in chart form displaying the frequency distribution of discounts or premiums of the bid-ask price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters; and (f) the current prospectus of the Trust, included in the Registration Statement.

On a daily basis, the Trust will disclose on its website for all of the assets held by the Fund the following information: name; ticker symbol (if applicable); CUSIP or other identifier (if

¹⁴ The Exchange notes that the Prior Release provided that the Indicative Optimized Portfolio Value (“IOPV”) would be calculated rather than the IIV. However, Arca Rule 8.700-E(c)(3) has since been updated to reflect that IIV is currently used for Managed Trust Securities listed and traded on Arca rather than the IOPV. The definition of IIV in Arca Rule 8.700-E(c)(3) is substantively identical to Exchange Rule 14.11(e)(10)(C)(iii).

applicable); description of the holding; with respect to derivatives, the identity of the security, commodity, index or other underlying asset; the quantity or aggregate amount of the holding as measured by par value, notional value or amount, number of contracts or number of units (if applicable); maturity date; coupon rate (if applicable); effective date or issue date (if applicable); market value; percentage weighting in the Disclosed Portfolio; and expiration date (if applicable).

As noted above, the Trust's NAV and the NAV per Share will be calculated and disseminated daily after the close of the Regular Trading Hours (normally 4:00 p.m., E.T.).¹⁵ The Exchange will disseminate for the Trust on a daily basis by means of the Consolidated Tape Association (the "CTA") high-speed line information with respect to the most recent NAV per Share, and the number of Shares outstanding. The Exchange also will make available on its website daily trading volume, closing prices and the NAV per Share at no charge.

Pricing for VIX is available from major market data vendors. Pricing for VIX Futures is available from CFE and from major market data vendors. Pricing for Cboe Options is available from Cboe and from major market data vendors. Price information for cash equivalents is available from major market data vendors.

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

¹⁵ The Exchange will obtain a representation from the Trust that the NAV and the NAV per Share will be calculated daily and that the NAV, the NAV per Share and the composition of the Disclosed Portfolio will be made available to all market participants at the same time.

Impact on Arbitrage Mechanism

The Sponsor believes there will be minimal, if any, impact to the arbitrage mechanism as a result of the use of derivatives. Market makers and participants should be able to value derivatives as long as the positions are disclosed with relevant information. The Sponsor believes that the price at which Shares trade will continue to be disciplined by arbitrage opportunities created by the ability to purchase or redeem Shares at their NAV, which should help ensure that Shares will not trade at a material discount or premium in relation to their NAV.

The Sponsor does not believe there will be any significant impacts to the settlement or operational aspects of the Fund's arbitrage mechanism due to the use of derivatives.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in Exchange Rule 14.11(e)(10)(E) for initial and continued listing of the Shares.

The minimum number of Shares to be outstanding at the start of trading will be 100,000 Shares. The Exchange believes that this minimum number of Shares to be outstanding at the start of trading is sufficient to provide adequate market liquidity. The Exchange represents that, for the initial and continued listing of the Shares, the Trust must be in compliance with Exchange Rule 14.10 and Rule 10A-3 under the Exchange Act.¹⁶

Trading Rules

Under Exchange Rule 14.11(e)(10)(B), Managed Trust Securities are included within the Exchange's definition of "securities." The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Interpretation and Policy .02 to Exchange Rule 14.11(e)(10) provides that

¹⁶ 17 CFR 240.10A-3.

transactions in Managed Trust Securities will occur during Regular Trading Hours, and the Early Trading,¹⁷ Pre-Opening¹⁸ and After Hours Sessions.¹⁹ Therefore, the Shares will trade on the Exchange from 7:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in Exchange Rule 11.11, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in the Shares will be halted if the circuit breaker parameters under Exchange Rule 11.18 are reached. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

In addition, if the Exchange becomes aware that the NAV, the NAV per Share and /or the Disclosed Portfolio with respect to a series of Managed Trust Securities is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV, the NAV per Share and the Disclosed Portfolio is available to all market participants.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are

¹⁷ See Exchange Rule 1.5(ff).

¹⁸ See Exchange Rule 1.5(r).

¹⁹ See Exchange Rule 1.5(c).

designed to detect violations of Exchange rules and applicable federal securities laws.²⁰ The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns, which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and VIX Futures with other markets or other entities that are members of the intermarket surveillance group (“ISG”), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and VIX Futures from such markets or entities. In addition, the Exchange may obtain information regarding trading in the Shares and VIX Futures from markets or other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²¹ FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain cash equivalents held by the Fund reported to FINRA’s Trade Reporting and Compliance Engine (“TRACE”).

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

²⁰ FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA’s performance under this regulatory services agreement.

²¹ For a list of the current members of ISG, see www.isgportal.org. The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values (as applicable), or the applicability of Exchange listing rules relating to the Shares shall constitute continued listing requirements for the Shares listed on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund 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 the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the IIV and the Disclosed Portfolio is disseminated; (4) the risks involved in trading the Shares outside of Regular Trading Hours when an updated IIV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

The Information Circular also will reference the fact that there is no regulated source of last sale information regarding certain of the asset classes that the Trust may hold and that the Commission has no jurisdiction over the trading of VIX Futures.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Fund. Members purchasing Shares from the Fund for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act. In addition, the Information Circular will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares of the Fund and the applicable NAV calculation time for the Shares. The Information Circular will disclose that information about the Shares of the Fund will be publicly available on the Fund's website.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.²² Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²³ 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

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

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 the Section 6(b)(5)²⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange is proposing to adopt rules identical to those of another exchange and is further proposing a proposed rule change to facilitate the transfer of the security to the Exchange. Except for the size of the creation unit, all other representations made in the Prior Release remain true for the Fund.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices with respect to the proposal to list and trade Shares on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(10). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The Sponsor is not a broker-dealer and is not affiliated with a broker-dealer dealer. In the event (a) the Sponsor becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new sponsor is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the Disclosed Portfolio (as defined in Exchange Rule 14.11(e)(10)(C)(ii)), and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio. The Exchange, FINRA, on behalf of the Exchange, or both

²⁴ Id.

may obtain information regarding trading in the Shares and the underlying VIX Futures via the ISG from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

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 exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the transfer from NYSE Arca and listing of an additional exchange-traded product on the Exchange, which will enhance competition among listing venues, to the benefit of issuers, investors, and the marketplace more broadly. The Exchange does not believe its proposal to amend Exchange Rule 14.11(e)(10)(C)[sic] will burden competition as the proposed changes would make the Rule identical to NYSE Arca Rule 8.700(E)[sic](c)(1).

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

Pursuant to Section 19(b)(3)(A) of the Act²⁵ and Rule 19b-4(f)(6)²⁶ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.²⁷

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)²⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed rule change, which modifies certain listing standards applicable to Managed Trust Securities, conforms to substantially similar standards of another national securities exchange²⁹ and raises no novel legal or regulatory issues. In addition, the Exchange proposes to

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. See id. The Exchange has satisfied this requirement.

²⁸ 17 CFR 240.19b-4(f)(6)(iii).

²⁹ See NYSE Arca Rule 8.700-E(c)(1) (setting forth the initial and continued listing standards for Managed Trust Securities). See also supra note 6 and accompanying text.

list and trade the Fund's shares, which were previously approved for listing and trading and are currently listed and trading on NYSE Arca, Inc.³⁰ According to the Exchange, the proposal to list and trade the shares of the Fund is substantively identical to the Prior Release and, except for the modification of the creation unit size, all representations contained in the Prior Release remain true.³¹ As such, the proposal to list and trade the shares of the Fund on the Exchange raises no novel legal or regulatory issues. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.³²

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.

³⁰ See supra note 8 and accompanying text. BZX represents that the date the Fund shares will transfer listing to the Exchange is anticipated to be September 30, 2024. See Item 3 of Form 19b-4 at 22.

³¹ While the size of a creation unit for the Fund has changed from the Prior Release (in the current proposal, a creation unit is a block of 10,000 shares, and in the Prior Release, a creation unit is a block of 50,000 shares), the Prior Release represented that the size of a creation unit is subject to change. See Prior Proposal, supra note 8, 84 FR at 44645. BZX represents that, except for the creation unit size, all representations pertaining to the purchases and redemptions of creation units are identical to those in the Prior Release. The Commission also recognizes that other proposals to list and trade shares of exchange-traded products provide for similar creation unit sizes and representations. See, e.g., Securities Exchange Act Release No. 94569 (March 31, 2022) 87 FR 19990 (April 6, 2022) (SR-NYSEArca-2022-16) (representing that the shares of the DoubleLine Shiller CAPE U.S. Equities ETF will be issued and redeemed in creation units of 10,000 shares and that the size of a creation unit is subject to change).

³² 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).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-089 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-CboeBZX-2024-089. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office

of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-089 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Vanessa A. Countryman,

Secretary.

³³ 17 CFR 200.30-3(a)(12), (59).