

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87856; File No. SR-CboeBZX-2019-107)

December 23, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt Rule 14.11(m), Portfolio Fund Shares, and to List and Trade Shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF, Each a Series of the Fidelity Beach Street Trust, under Proposed Rule 14.11(m)

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 December 12, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 a rule change to adopt Rule 14.11(m), Portfolio Fund Shares, and to list and trade shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF (each a “Fund” and, collectively, the “Funds”), each a series of the Fidelity Beach Street Trust (the “Trust”), under such proposed Rule 14.11(m). The shares of each Fund are referred to herein as the “Shares.” 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 add new Rule 14.11(m)³ for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Portfolio Fund Shares, which are securities issued by an actively managed open-end management investment company.⁴

³ The Exchange notes that it is proposing new Rule 14.11(m) because it has also proposed a new Rule 14.11(k) and new Rule 14.11(l) under two separate proposals. See Securities Exchange Act Release Nos. 87062 (September 23, 2019), 84 FR 51193 (September 27, 2019) (SR-CboeBZX-2019-047) and 87560 (November 18, 2019), 84 FR 64607 (November 22, 2019) (CboeBZX-2019-097).

⁴ The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 (the “Notice”) and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Order” and, collectively, with the Application and the Notice, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.” The Exchange notes that it also referred to the application for exemptive relief orders for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214

Proposed Rule 14.11(m)

Proposed Rule 14.11(m)(3)(A) provides that the term “Portfolio Fund Share” means a security that: (i) represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or similar entity, that: (a) invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; and (b) will at a minimum disclose the Fund Portfolio within at least 60 days following the end of every fiscal quarter; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Proposed Rule 14.11(m)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Portfolio Fund Shares that meet the criteria of this Rule.

Proposed Rule 14.11(m)(2) provides that this proposed Rule is applicable only to Portfolio Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Portfolio Fund Shares are included within the

and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Portfolio Fund Shares under proposed Rule 14.11(m).

definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(m)(2)(A)-(D) provide that the Exchange will file separate proposals under Section 19(b) of the Act before the listing of Portfolio Fund Shares; that transactions in Portfolio Fund Shares will occur throughout the Exchange’s trading hours; the minimum price variation for quoting and entry of orders in Portfolio Fund Shares is \$0.01; and that the Exchange will implement written surveillance procedures for Portfolio Fund Shares.

Proposed Rule 14.11(m)(3)(B) provides that the term “Fund Portfolio” means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day.

Proposed Rule 14.11(m)(3)(C) provides that the term “Reporting Authority” in respect of a particular series of Portfolio Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Portfolio Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Portfolio Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Portfolio Fund Shares. A series of Portfolio Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(m)(3)(D) provides that the term “Proxy Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares, as provided in the exemptive relief applicable to a series of Portfolio Fund Shares. The Proxy

Basket also serves as the creation and redemption basket for a series of Portfolio Fund Shares. The Proxy Basket will be constructed as provided in the applicable exemptive relief and will be fully described in the proposal required under Rule 14.11(m)(2)(A). The website for each series of Portfolio Fund Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 14.11(m), to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of the holding; (iv) Identity of the security, commodity, index, or other asset upon which the derivative is based; (v) The strike price for any options; (vi) The quantity of each security or other asset held as measured by: (a) Par value; (b) Notional value; (c) Number of shares; (d) Number of contracts; (e) Number of units; (vii) Maturity date; (viii) Coupon rate; (ix) Effective date; (x) Market value; and (xi) Percentage weighting of the holding in the portfolio.

Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Portfolio Fund Shares, which include the following: (A) each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) for each series, the Exchange will establish a minimum number of Portfolio Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i)(a) the Proxy Basket will be disseminated at least once daily and will be made

available to all market participants at the same time; and (b) the Reporting Authority that provides the Proxy Basket must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Proxy Basket; (ii) the Fund Portfolio will at a minimum be disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Fund Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund Portfolio; (iii) upon termination of an Investment Company, the Exchange requires that Portfolio Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iv) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Portfolio Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Portfolio Fund Shares, there are fewer than 50 beneficial holders of the series of Portfolio Fund Shares for 30 or more consecutive trading days; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Portfolio Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Portfolio Fund Shares; (d) if any of the requirements set forth in this

rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Portfolio Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Portfolio Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Portfolio Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(m)(6) provides that the provisions of this subparagraph apply only to series of Portfolio Fund Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (the “1940 Act”) and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members regarding

application of these provisions of this subparagraph to a particular series of Portfolio Fund Shares by means of an information circular prior to commencement of trading in such series. The Exchange requires that members provide to all purchasers of a series of Portfolio Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Fund Shares as an investment vehicle must include a statement in substantially the following form: “A circular describing the terms and characteristics of (the series of Portfolio Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Portfolio Fund Shares).” A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule. Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Fund Shares.

Proposed Rule 14.11(m)(7) provides that if the investment adviser to the Investment Company issuing Portfolio Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such

Investment Company portfolio and Proxy Basket. Personnel who make decisions on the Investment Company's portfolio composition and/or Proxy Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio and/or Proxy Basket.

Policy Discussion – Proposed Rule 14.11(m)

The purpose of the structure of Portfolio Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Portfolio Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Portfolio Fund Shares differ from Managed Fund Shares in one key way.⁵ A series of Portfolio Fund Shares will disclose the Proxy Basket on a daily basis which, as described above, is designed to closely track the performance of the holdings of the Investment Company, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.⁶

⁵ The Exchange notes that there are two additional differences between proposed Rule 14.11(m) and Rule 14.11(i): (i) proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Portfolio Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i); and (ii) proposed Rule 14.11(m) would not require the dissemination of an intraday indicative value. The Exchange has submitted a proposal to eliminate the requirement for series of Managed Fund Shares and generally agrees with the Commission's sentiment that the intraday indicative value is not necessary to support the arbitrage mechanism. See SR-CboeBZX-2019-104 and Investment Company Act Release No. 10695 (October 24, 2019) (84 FR 57162).

⁶ Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Portfolio Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, “Market Makers”) need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket, constructed as provided in the applicable exemptive relief, is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares.

Given the correlation between the Proxy Basket and the Fund Portfolio,⁷ the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Portfolio Fund Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to

by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund’s Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund’s SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission’s website at www.sec.gov.

⁷ As provided in the Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund’s crossing a threshold, the adviser will promptly call a meeting of the fund’s board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Applications and Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

comprise a creation unit,⁸ redeem them in exchange for a redemption basket reflecting the Net Asset Value (“NAV”) per share of the fund’s portfolio holdings. The purchases of Shares would reduce the supply of Shares in the market, and thus tend to drive up the Shares’ market price closer to the fund’s NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF’s complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF’s actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

⁸ Portfolio Fund Shares will be purchased or redeemed only in large aggregations, or “creation units,” and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.⁹ Consistent with the Commission's view, the Exchange believes that because the arbitrage mechanism for Portfolio Fund Shares will be sufficient to keep secondary market prices in line with NAV and because the proposed rules are except as described above nearly identical to the generic listing standards for Managed Fund Shares, proposed Rule 14.11(m) is consistent with the Act.

The Exchange notes that while the Proxy Basket does not reflect the 1-for-1 holdings of each series of Portfolio Fund Shares, a significant amount of information about the holdings is publicly available at all times. Each series will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information. However, the Exchange believes that proposed Rule 14.11(m)(7) provides sufficient safeguards to prevent such leakage and misuse because the fire wall requirement will act to make sure that no entity will be

⁹ See Fidelity Notice at 17. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.

able to misuse the data for their own purposes and the requirement related to information protection will act as a deterrent to any misuse and improper dissemination of a fund's portfolio composition and other material non-public information.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Portfolio Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Portfolio Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Portfolio Fund Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As described above, proposed Rule 14.11(m)(4)(B)(iv) provides that if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time, respectively: the net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Portfolio Fund Shares; then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Availability of Information

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

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. Information regarding 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 Consolidated Tape Association ("CTA") high-speed line.

Trading Rules

The Exchange deems Portfolio Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

Information Circular

Prior to the commencement of trading of a series of Portfolio Fund Shares, the Exchange will inform its members in an Information Circular ("Circular") of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1)

the procedures for purchases and redemptions of Shares; (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 Proxy Basket is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the Fund Portfolio of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

The Shares

The Shares are offered by the Trust, which is organized as a business trust under the laws of The Commonwealth of Massachusetts. The Trust is registered with the Commission as an open-end investment company and will file a registration statement on behalf of the Funds on Form N-1A (“Registration Statement”) with the Commission.¹⁰ Fidelity Management & Research Company or FMR Co., Inc. (the “Adviser”) will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with numerous broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to

¹⁰ The Trust intends to file a post-effective amendment to the Registration Statement in the near future. The descriptions of the Funds and the Shares contained herein are based, in part, on information that will be included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a-1).

information concerning the composition and/or changes to each Fund's portfolio and Proxy Basket. Personnel who make decisions on a Fund's portfolio composition and/or Proxy Basket shall be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Proxy Basket. The Funds' sub-advisers, FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited (each a "Sub-Adviser" and, collectively, the "Sub-Advisers"), are not registered as a broker-dealer but are affiliated with numerous broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's portfolio and/or Proxy Basket are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Proxy Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and/or Proxy Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Proxy Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(I) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.¹¹ A minimum

¹¹ See 17 CFR 240.10A-3.

of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time.

Fidelity Value ETF

The Fund seeks long-term growth of capital. In order to achieve its investment objective, under Normal Market Conditions,¹² the Fund will primarily invest its assets in: (i) securities that the Adviser believes are undervalued in the marketplace in relation to factors such as assets, sales, earnings, growth potential, or cash flow, or in relation to securities of other companies in the same industry (stocks of these companies are often called “value” stocks) listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund’s Shares; and (ii) cash and Cash Equivalents.¹³

The Fund may also invest the Fund’s assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its

¹² The term “Normal Market Conditions” includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

¹³ For purposes of this proposal and as defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months that are: (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.

assets in each of U.S. exchange-traded index futures, preferred securities, and short-term US Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.¹⁴

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Fidelity Growth ETF

The Fund seeks growth of capital over the long term. In order to achieve its investment objective, under Normal Market Conditions, the Fund will primarily invest its assets in: (i) securities that the Adviser believes have above-average growth potential (stocks of these companies are often called "growth" stocks) that are listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares; and (ii) cash and Cash Equivalents.

The Fund may also invest the Fund's assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its assets in each of U.S. exchange-traded index futures, preferred securities, and short-term US Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy

¹⁴ The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.¹⁵

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Fidelity Opportunistic ETF

The Fund seeks long-term growth of capital. In order to achieve its investment objective, under Normal Market Conditions, the Fund will primarily invest in (i) both “growth” and “value” stocks based on fundamental analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions that are listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares; and (ii) cash and Cash Equivalents.

The Fund may also invest the Fund's assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its assets in each of U.S. exchange-traded index futures, preferred securities, and short-term U.S. Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy

¹⁵ The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.¹⁶

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Proxy Basket for the Proposed Funds

For the Funds, the Proxy Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs.¹⁷ ETFs selected for inclusion in the Proxy Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Proxy Basket without revealing a Fund's exact positions.¹⁸ The

¹⁶ The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

¹⁷ For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), and Managed Fund Shares as defined in Rule 14.11(i), along with the equivalent products defined in the rules of other national securities exchanges.

¹⁸ The set of ETFs that are "representative" to be used in the Proxy Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Proxy Basket. ETFs may constitute no more than 50% of the Proxy Basket's assets.

Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Proxy Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket, as further described below.

The Proxy Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Proxy Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Proxy Basket as a hedge: tracking error (standard deviation of return differentials between the Proxy Basket and the Fund), turnover cost, and basket creation cost.¹⁹ Typically, the Proxy Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Proxy Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Proxy Basket, the Adviser will consider various factors, including liquidity of the

¹⁹ Tracking error measures the deviations between the Proxy Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Proxy Basket as a hedge.

securities in the Proxy Basket, tracking error, and the cost to create and trade the Proxy Basket.²⁰ For example, if the Adviser determines that a new Proxy Basket would reduce the variability of return differentials between the Proxy Basket and the Fund when balanced against the cost to trade the new Proxy Basket, rebalancing may be appropriate. The Adviser will periodically review the Proxy Basket parameters and Proxy Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Proxy Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

Policy Discussion – Proposed Funds

As discussed above, each Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings

²⁰ The Adviser uses a trading cost model to develop estimates of costs to trade a new Proxy Basket. There are essentially two elements to this cost: (1) the cost to purchase securities constituting the Proxy Basket, *i.e.*, the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Proxy Basket, *i.e.*, the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Proxy Basket that is cost effective and liquid without compromising its tracking ability.

that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares and, as such, any such concerns related to the portfolio are mitigated.

Separately and in addition to the rationale supporting the arbitrage mechanism for Portfolio Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Proxy Basket do not raise any concerns related to the Proxy Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Proxy Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Notice specifically states that "in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares."²¹ The Exchange and Adviser agree with the Commission's conclusion.

The Adviser anticipates that the returns between a Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between a Fund and its

²¹ The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that "Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents...All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an "Exchange" is a national securities exchange as defined in section 2(a)(26) of the [1940] Act." See Notice at 10.

Proxy Basket will be sufficiently small such that the Proxy Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

While the Proxy Basket does not reflect the 1-for-1 holdings of each Fund, a significant amount of information about each Fund's holdings is publicly available at all times. Each Fund will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price at the time of calculation of such NAV, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV. The website will also disclose any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

Additional Information

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Portfolio Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio, and Net Asset Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in the proposed Exchange rules applicable to Portfolio Fund Shares and the orders approving such rules.

Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of Intermarket Surveillance Group (“ISG”) or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.²² All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or the Financial Industry Regulatory Authority (“FINRA”), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and 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 such instruments from such markets and other entities. In addition, the Exchange may obtain information

²² For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act²³ in general and Section 6(b)(5) of the Act²⁴ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to

²³ 15 U.S.C. 78f.

²⁴ 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.

The Exchange believes that proposed Rule 14.11(m) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Portfolio Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Portfolio Fund Shares, which include the following: (A) each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) for each series, the Exchange will establish a minimum number of Portfolio Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i)(a) the Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Proxy Basket must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Proxy Basket; (ii) the Fund Portfolio will at a minimum be disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Fund Portfolio

must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund Portfolio; (iii) upon termination of an Investment Company, the Exchange requires that Portfolio Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iv) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Portfolio Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) if, following the initial twelve-month period after commencement of trading on the Exchange of a series of Portfolio Fund Shares, there are fewer than 50 beneficial holders of the series of Portfolio Fund Shares for 30 or more consecutive trading days; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Portfolio Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Portfolio Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Portfolio Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(7) proposed Rule 14.11(m)(7) provides that if the investment adviser to the Investment Company issuing Portfolio Fund Shares is affiliated with a broker-

dealer, such investment adviser shall erect and maintain a “fire wall” between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio and Proxy Basket. Personnel who make decisions on the Investment Company’s portfolio composition and/or Proxy Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio and/or Proxy Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Portfolio Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(m)(7) will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

As noted above, the purpose of the structure of Portfolio Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Portfolio Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Portfolio Fund Shares differ from

Managed Fund Shares in one key way.²⁵ A series of Portfolio Fund Shares will disclose the Proxy Basket on a daily basis which, as described above, is designed to closely track the performance of the holdings of the Investment Company, instead of the actual holdings of the Investment Company, as provided by a series of Managed Fund Shares.²⁶

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket, constructed as provided in the applicable exemptive relief, is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares.

²⁵ The Exchange notes that there are two additional differences between proposed Rule 14.11(m) and Rule 14.11(i): (i) proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Portfolio Fund Shares could be listed on the Exchange pursuant to Rule 19b-4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i); and (ii) proposed Rule 14.11(m) would not require the dissemination of an intraday indicative value. The Exchange has submitted a proposal to eliminate the requirement for series of Managed Fund Shares and generally agrees with the Commission's sentiment that the intraday indicative value is not necessary to support the arbitrage mechanism. See SR-CboeBZX-2019-104 and Investment Company Act Release No. 10695 (October 24, 2019) (84 FR 57162).

²⁶ Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Portfolio Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

Given the correlation between the Proxy Basket and the Fund Portfolio,²⁷ the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Portfolio Fund Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,²⁸ redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of Shares would reduce the supply of Shares in the market, and thus tend to drive up the Shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices.

²⁷ As provided in the Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Applications and Notices provide that such a meeting would occur: (1) if the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

²⁸ Portfolio Fund Shares will be purchased or redeemed only in large aggregations, or "creation units," and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.²⁹ Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Portfolio Fund Shares will be sufficient to keep secondary market prices in line with NAV. This, combined with the fact that the proposed rules are, except as described above, nearly identical to the generic listing standards for Managed Fund Shares, leads the Exchange to believe that the proposed Rule 14.11(m) is consistent with the Act.

²⁹ See Fidelity Notice at 17. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.

The Exchange notes that while the Proxy Basket does not reflect the 1-for-1 holdings of each series of Portfolio Fund Shares, a significant amount of information about the holdings is publicly available at all times. Each series will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Portfolio Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Portfolio Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Portfolio Fund Shares listed on the Exchange to represent to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, Form N-PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports,

its Form N-CSR, filed twice a year, and its Form N-CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N-PORT, Form N-CSR, and Form N-CEN may be viewed on-screen or downloaded from the Commission's website at www.sec.gov.

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. Information regarding 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. The Exchange deems Portfolio Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01.

The Funds

As discussed above, each Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares and, as such, any such concerns related to the portfolio are mitigated.

Separately and in addition to the rationale supporting the arbitrage mechanism for Portfolio Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Proxy Basket do not raise any

concerns related to the Proxy Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Proxy Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Notice specifically states that "in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares."³⁰ The Exchange and Adviser agree with the Commission's conclusion.

The Adviser anticipates that the returns between a Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Proxy Basket will be sufficiently small such that the Proxy Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares,

³⁰ The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that "Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents...All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an "Exchange" is a national securities exchange as defined in section 2(a)(26) of the [1940] Act." See Notice at 10.

which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

While the Proxy Basket does not reflect the 1-for-1 holdings of each Fund, a significant amount of information about each Fund's holdings is publicly available at all times. Each Fund will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price at the time of calculation of such NAV, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV. The website will also disclose any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c-11 under the 1940 Act, as amended.

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Portfolio Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio, and Net Asset Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in the proposed Exchange rules

applicable to Portfolio Fund Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.³¹ All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

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. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of

³¹ For a list of the current members of ISG, see www.isgportal.com. The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

actively-managed exchange-traded products, thus enhancing competition among both market participants and listing venues, 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

The Exchange has neither solicited nor received written comments on 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 Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-107 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2019-107. This file number should be included on the subject line if e-mail 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, D.C. 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-CboeBZX-2019-107, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Eduardo A. Aleman
Deputy Secretary

³² 17 CFR 200.30-3(a)(12).