

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–11 (17 CFR 239.18) is the registration statement form used to register securities issued in real estate investment trusts by issuers whose business is primarily that of acquiring and holding investment interest in real estate under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information filed with the Commission permits verifications of compliance with securities law requirements and assures public availability. We estimate that Form S–11 takes approximately 730.08 hours per response and is filed by approximately 67 issuers annually. In addition, we estimate that 25% of the 730.08 hours per response (182.52 hours) is prepared by the issuer for annual reporting burden of 12,229 hours (182.52 hours per response × 67 responses)

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by July 18, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct your written comment to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: PRA_Mailbox@sec.gov.

Dated: May 13, 2022.

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022–10728 Filed 5–18–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94911; File No. SR–CboeBZX–2022–030]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule Relating to the Sale of Open-Close Volume Data

May 13, 2022.

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 May 2, 2022, 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend its Fees Schedule relating to the sale of Open-Close volume data. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/equities/regulation/rule_filings/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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

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

1. Purpose

The Exchange proposes to update its Fee Schedule for its equity options platform (“BZX Options”) to (i) offer a free trial during the months of May, June and July 2022 for an ad-hoc request of three (3) historical months of Intraday Open-Close historical data to all BZX Options Members and non-Members who have never before subscribed to the Intraday Open-Close historical files and (ii) adopt fees for the external distribution of products derived from Open-Close Data, effective May 2, 2022.

By way of background, the Exchange currently offers End-of-Day (“EOD”) and Intraday Open-Close Data (collectively, “Open-Close Data”). EOD Open-Close Data is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199 contracts). The Open-Close Data is proprietary BZX Options trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The Exchange also offers Intraday Open-Close Data, which provides similar information to that of Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in “snapshots” taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.³ The Intraday Open-Close Data provides a volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100–199 contracts, greater than 199

³ For example, subscribers to the intraday product will receive the first calculation of intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current “snapshot” and all previous “snapshots.”

contracts). The Intraday Open-Close Data is also proprietary BZX Options trade data and does not include trade data from any other exchange.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Open-Close Data available for purchase to Members and non-Members on the LiveVol DataShop website (*datashop.cboe.com*). Customers may currently purchase Open-Close Data on a subscription basis (monthly or annually) or by ad hoc request for a specified month (e.g., request for Intraday Open-Close Data for month of January 2022).

Open-Close Data is subject to direct competition from similar end-of-day and intraday options trading summaries offered by several other options exchanges.⁴ All of these exchanges offer essentially the same end-of-day and intraday options trading summary information.

Free Trial

The Exchange first seeks to adopt a free trial for historical ad hoc requests for Intraday Open-Close Data for new purchasers. Currently, ad hoc requests for historical Intraday Open-Close Data are available to all customers at the same price and in the same manner. The current charge for this historical Intraday Open-Close Data covering all of the Exchange’s securities (Equities, Indexes & ETF’s) is \$750 per month. The Exchange now proposes to adopt a free trial available during the months of May, June and July 2022 to provide a total up to three (3) historical months of Intraday Open-Close Data to any Member or non-Member that has not previously subscribed to this offering.⁵ The Exchange notes that it previously offered this free trial period last year for the months of June and July 2021.⁶ The

Exchange believes bringing back the proposed trial will again serve as an incentive for new users who have never purchased Intraday Open-Close historical data to start purchasing Intraday Open-Close historical data. Particularly, the Exchange believes it will give potential subscribers the ability to use and test the data offering before signing up for additional months. The Exchange also notes another exchange offers a free trial for new subscribers of a similar data product.⁷ Lastly, the purchase of Intraday Open-Close historical data is discretionary and not compulsory.

External Distribution of Derived Data

The external distribution of Open-Close Data or any product derived from such data is not currently permitted. The Exchange proposes to remove that prohibition and allow vendors to distribute “Derived Data” based on Open-Close Data. “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data.⁸ Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. The Exchange believes allowing market data vendors to identify, develop, and sell derived market data products, enables them to harness the power of the competitive marketplace to promote innovation.

The Exchange proposes to adopt a fee of \$5,000 per month to allow the unlimited external distribution of Derived Data from Open-Close Data.⁹ The fee charged to distribute the Derived Data will be constrained by potential competition, as any exchange with an options trading product would be able to submit an immediately effective fee filing to allow redistribution, most likely without needing to modify the underlying product in any way, thereby subjecting the proposed fee to market competition.

⁷ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A., Nasdaq ISE Open/Close Trade Profile End of Day.

⁸ “Derived Data” is not currently a defined term in the Cboe BZX Options Fees Schedule. The Exchange proposes to add the definition to the Notes section of the LiveVol Fees table for clarity.

⁹ The External Distribution Fee for Derived Open-Close Data will be in addition to fees for the underlying data. For example, external distribution of data derived from the Intraday product will be \$1,500 per month (the monthly subscription fee), plus the proposed \$5,000 per month External Distribution fee.

Moreover, the Exchange notes at least one other Exchange currently allows, and charges for, external distribution of derived data based on similar open-close data.¹⁰

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹³ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes the proposed fee changes will further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Open-Close Data is designed to help investors understand underlying market trends to improve the quality of investment decisions. Indeed, subscribers to the data may be able to enhance their ability to analyze option trade and volume data and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading

¹⁰ See Nasdaq PHLX, Options 7 Pricing Schedule, Photo Historical Data, External Distribution.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

¹³ *Id.*

⁴ These substitute products are: Nasdaq PHLX Options Trade Outline, Nasdaq Options Trade Outline, ISE Trade Profile, GEMX Trade Profile data; open-close data from Cboe Options, C2, and EDGX; and Open Close Reports from MIAX Options, Pearl, and Emerald.

⁵ For example, if a Member or non-Member that has never made an ad-hoc request for a specified month of Intraday Open-Close historical data wishes to purchase Intraday Open-Close Data for the months of January, February and March 2022 during the month of June 2022, the historical files for those months would be provided free of charge. If a new user wishes to purchase Intraday Open-Close historical data for the months of January, February, March and April 2022 during the month of June 2022, then the data for January, February and March 2022 would be provided free of charge, and the new user would be charged \$750 for the April 2022 historical file.

⁶ The Exchange notes it inadvertently never eliminated the obsolete rule text language from the Fees Schedule. The Exchange proposes to update the text to conform to the proposed fee change.

activity in a particular series, but also emphasizes such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer same type of data content through end-of-day or intraday reports.¹⁴

The Exchange also operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 16% of the market share.¹⁵ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁶ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive [sic] fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of historical Intraday Open-Close Data, as well as attract Distributors for derived data of its Open-Close Data.

The Exchange believes that the proposed free trial for any Member or non-Member who has not previously purchased Intraday Open-Close historical data is reasonable because such users would not be subject to fees for up to 3 months’ worth of Intraday Open-Close historical data. The Exchange believes the proposed free trial is also reasonable as it will give potential subscribers the ability to use and test the Intraday Open-Close historical data prior to purchasing additional months and will therefore encourage and promote new users to purchase the Intraday Open-Close

historical data. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who have not previously purchased Intraday Open-Close historical data. Also as noted above, another exchange offers a free trial to new users for a similar data product¹⁷ and the Exchange itself previously offered a similar free trial.¹⁸ Lastly, the purchase of this data product is discretionary and not compulsory.

Next, the Exchange notes that the proposal to allow the external distribution of derived data is subject to competition as discussed above, and also introduces a new category of market participant for Open-Close Data—market data vendors—into the equation. Currently, Open-Close data is not available for redistribution, in either native form or through Derived Data. This proposal will create a new market for the sale of Derived Data from the Exchange’s Open-Close Data products to the general investing public. This is itself evidence of the competitive environment for Open-Close and its substitutes, as it is exactly the type of innovation one would expect to see in a competitive market. It will also spur further innovation by challenging market data vendors to create new and innovative Derived Data products. Any exchange that wishes to allow distribution of a Derived Data product based on options trading information would be able to do so with an immediately-effective fee filing similar to this proposal, most likely without requiring any technological enhancement to the underlying product. Indeed, as discussed, another Exchange already allows, and charges for, external distribution of derived data based on similar open-close data.¹⁹

Allowing the redistribution of Derived Data, but not the underlying information, to the general investing public is an equitable allocation of reasonable dues, fees and other charges because it is the most efficient mechanism for widespread delivery of market sentiment information. The proposal is designed to promote the dissemination of a variety of analytical insights—previously available only to investment banks, market makers, asset managers and other buy-side investors—to the general investing public by

creating an incentive for market data vendors to identify, develop, and sell such indicators. Ordinarily, neither exchanges nor vendors allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed. Allowing the redistribution of Derived Data provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide broader access to market sentiment insights currently available only to sophisticated investors.

The Exchange believes that the proposed fee for the external distribution of Derived Data from Open-Close Data is reasonable because the rate is the same as the amount charged by another exchange that also allows, and charges for, external distribution of derived data from similar open-close products.²⁰ Furthermore, the proposed fee will only apply to Distributors that elect to distribute Derived Data from Open-Close Data and as discussed, Open-Close Data, and Derived Data therefrom, is purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. While the Exchange has no way of predicting with certainty the impact of the proposed changes, it anticipates at least two Distributors will create Derived Data from Open-Close Data. Also, while the Exchange does not have a precise estimate of the number of individuals expected to benefit, which will ultimately depend on the usefulness of the Derived Data products that reach the market it expects this to be a popular product that may benefit thousands of investors.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an external distributor of Derived Data a \$5,000 fee as vendors will ordinarily charge a fee to their downstream customers for this service, and, even if the vendor is not charging a specific fee for this particular

¹⁴ See supra note 4.

¹⁵ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 29, 2022), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁷ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A., Nasdaq ISE Open/Close Trade Profile End of Day.

¹⁸ See Securities Exchange Act Release No. 92168 (June 14, 2021), 86 FR 33390 (June 24, 2021) (SR-CboeBZX-2021-043).

¹⁹ See Nasdaq PHLX, Options 7 Pricing Schedule, Photo Historical Data, External Distribution.

²⁰ *Id.*

service, the Exchange expects Derived Data products from Open-Close Data to be part of a suite of offerings from distributors that generally promote sales. External distribution is also fundamentally different than internal use, in that the former generates revenue from external sales while the latter does not. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a fee for a product that generates downstream revenue. Further, the proposed fee will apply equally to all distributors that choose to distribute Derived Data from Open-Close Data.

Additionally, the Exchange does not believe it is unfair discrimination to allow the redistribution of Derived Data, but not the underlying information, to the general investing public. As explained above, neither exchanges nor vendors ordinarily allow redistribution of analytic products—such products are typically designed solely for the use of direct customers, not for redistribution to the customers of customers in the manner of a data feed. Allowing the redistribution of Derived Data provides an incentive for vendors to innovate with new compelling and varied analytic products for the general investing public that will provide access to market sentiment insights currently available only to sophisticated investors. This proposal is therefore not unfair discrimination, but rather allows for more equitable access to market sentiment information to the general investing public.

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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

As discussed above, Open-Close Data is subject to direct competition from several other options exchanges that offer substitutes to Open-Close. Moreover, purchase of Open-Close is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange's efforts to

compete more effectively. The Exchange is proposing to broaden distribution of Open-Close information beyond investment banks, market makers, asset managers and other buy-side investors to market data vendors and the general investing public, and to provide a free trial for market participants to test investment strategies and trading models, and develop market sentiment indicators. These changes will not cause any unnecessary or inappropriate burden on intermarket competition, but rather will promote competition by expanding the market for Open-Close data and encouraging new market participants to investigate the product. Other exchanges are, of course, free to match these changes or undertake other competitive responses, enhancing overall competition.

The proposed rule changes will not cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fee applies uniformly to any Distributor, in that it does not differentiate between distributors that choose to distribute Derived Open-Close Data. Additionally, the Exchange believes it will foster competition by expanding dissemination of data to vendors and the general investing public, and by encouraging more market participants to use Open-Close data to help inform their investments strategies and analytic models. Lastly, the proposed fee will only apply to Distributors that elect to distribute Derived Data from Open-Close Data and as discussed, Open-Close Data, and Derived Data therefrom, is purchased on a voluntary basis.

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

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

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) ²¹ of the Act and subparagraph (f)(2) of Rule 19b-4 ²² thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) ²³ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2022-030 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-2022-030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(2).

²³ 15 U.S.C. 78s(b)(2)(B).

information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–030 and should be submitted on or before June 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10736 Filed 5–18–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94908; File No. SR–NYSEArca–2022–28]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Shares of the Principal Real Estate Active Opportunities ETF Under NYSE Arca Rule 8.601 (Active Proxy Portfolio Shares)

May 13, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that, on May 4, 2022, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 to list and trade shares of the Principal Real Estate Active Opportunities ETF under NYSE Arca Rule 8.601–E. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of,

and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange has adopted NYSE Arca Rule 8.601–E for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges (“UTP”), of Active Proxy Portfolio Shares, which are securities issued by an actively managed open-end investment management company.⁴ Commentary .01 to Rule 8.601–E requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Active Proxy Portfolio Shares on the Exchange. Therefore, the Exchange is submitting this proposal in order to list and trade shares (“Shares”) as Active

⁴ See Securities Exchange Act Release No. 89185 (June 29, 2020), 85 FR 40328 (July 6, 2020) (SR–NYSEArca–2019–95). Rule 8.601–E(c)(1) provides that “[t]he term ‘Active Proxy Portfolio Share’ means a security that (a) is issued by an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (b) is issued in a specified minimum number of shares, or multiples thereof, in return for a deposit by the purchaser of the Proxy Portfolio or Custom Basket, as applicable, and/or cash with a value equal to the next determined net asset value (“NAV”); (c) when aggregated in the same specified minimum number of Active Proxy Portfolio Shares, or multiples thereof, may be redeemed at a holder’s request in return for the Proxy Portfolio or Custom Basket, as applicable, and/or cash to the holder by the issuer with a value equal to the next determined NAV; and (d) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.” Rule 8.601–E(c)(2) provides that “[t]he term ‘Actual Portfolio’ means the identities and quantities of the securities and other assets held by the Investment Company that shall form the basis for the Investment Company’s calculation of NAV at the end of the business day.” Rule 8.601–E(c)(3) provides that “[t]he term ‘Proxy Portfolio’ means a specified portfolio of securities, other financial instruments and/or cash designed to track closely the daily performance of the Actual Portfolio of a series of Active Proxy Portfolio Shares as provided in the exemptive relief pursuant to the Investment Company Act of 1940 applicable to such series.” Rule 8.601–E(c)(4) provides that the term “Custom Basket” means a portfolio of securities that is different from the Proxy Portfolio and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 applicable to a series of Active Proxy Portfolio Shares.

Proxy Portfolio Shares of the Principal Real Estate Active Opportunities ETF (the “Fund”) under Rule 8.601–E.

Key Features of Active Proxy Portfolio Shares

While funds issuing Active Proxy Portfolio Shares will be actively-managed and, to that extent, will be similar to Managed Fund Shares, Active Proxy Portfolio Shares differ from Managed Fund Shares in the following important respects. First, in contrast to Managed Fund Shares, which are actively-managed funds listed and traded under NYSE Arca Rule 8.600–E⁵ and for which a “Disclosed Portfolio” is required to be disseminated at least once daily,⁶ the portfolio for an issue of Active Proxy Portfolio Shares will be publicly disclosed within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end management investment companies registered under the Investment Company Act of 1940 (the “1940 Act”).⁷ The composition of

⁵ The Commission has previously approved listing and trading on the Exchange of a number of issues of Managed Fund Shares under NYSE Arca Rule 8.600–E. See, e.g., Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF). The Commission also has approved a proposed rule change relating to generic listing standards for Managed Fund Shares. See Securities Exchange Act Release No. 78397 (July 22, 2016), 81 FR 49320 (July 27, 2016) (SR–NYSEArca–2015–110) (amending NYSE Arca Equities Rule 8.600 to adopt generic listing standards for Managed Fund Shares).

⁶ NYSE Arca Rule 8.600–E(c)(2) defines the term “Disclosed Portfolio” as the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company’s calculation of net asset value at the end of the business day. NYSE Arca Rule 8.600–E(d)(2)(B)(i) requires that the Disclosed Portfolio will be disseminated at least once daily and will be made available to all market participants at the same time.

⁷ A mutual fund is required to file with the Commission its complete portfolio schedules for the second and fourth fiscal quarters on Form N–CSR under the 1940 Act. Information reported on Form N–PORT for the third month of a fund’s fiscal quarter will be made publicly available 60 days after the end of a fund’s fiscal quarter. 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 series of Active Proxy Portfolio Shares’ Statement of Additional Information (“SAI”), its Shareholder Reports, its

²⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.