

and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of ETF Shares that will enhance 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 neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to immediately allow ETF Shares to be traded on another venue. The Commission believes that waiver of the 30-day operative delay for this purpose is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2020-021 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-CboeEDGX-2020-021. 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

<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>21</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-021 and should be submitted on or before June 4, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-10287 Filed 5-13-20; 8:45 am]

BILLING CODE 8011-01-P

### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-88844; File No. SR-CboeEDGA-2020-013]

#### **Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting Rule 14.12 Governing the Trading, Pursuant to Unlisted Trading Privileges, of Exchange-Traded Fund Shares**

May 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2020, Cboe EDGA Exchange, Inc. ("Exchange" or "EDGA") filed with the Securities and Exchange Commission

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

(“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 EDGA Exchange, Inc. (the “Exchange” or “EDGA”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a). 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/options/regulation/rule\\_filings/edga/](http://markets.cboe.com/us/options/regulation/rule_filings/edga/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

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

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

#### 1. Purpose

The Exchange proposes to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges (“UTP”), of Exchange-Traded Fund (also referred to as “ETF”) Shares,<sup>5</sup> which substantially conforms to Cboe BZX Exchange, Inc.

(“BZX”) Rule 14.11(l).<sup>6</sup> Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Exchange-Traded Fund Shares and proposed Rule 14.12, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3<sup>7</sup> (“Rule 10A-3”) and 10C-1<sup>8</sup> (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11, and proposed Rule 14.12 that permit the listing of certain Equity Securities<sup>9</sup> will not be effective until the Exchange files a proposed rule change under Section 19(b)(2) under the Exchange Act to amend its rules to comply with Rule 10A-3 and 10C-1 under the Exchange Act and to incorporate qualitative listing criteria, and such proposed rule change is approved by the Commission. Considering the foregoing, the Exchange proposes to adopt Rule 14.12 as set forth below.

#### Proposed Listing Rules

Proposed Rule 14.12(a) provides that the Exchange will consider for trading, whether by listing or pursuant to UTP,

<sup>6</sup> See Securities and Exchange Act Release No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (the “BZX Approval Order”).

<sup>7</sup> Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

<sup>8</sup> Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer’s compensation committee to be a member of the issuer’s board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

<sup>9</sup> As provided in Rule 14.1(a), the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust Shares, Currency Trust Shares, Partnership Units, Equity-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Portfolio Depositary Receipts, Equity-Linked Debt Securities, and Managed Portfolio Shares. Further, the Exchange now proposes to include the term “Exchange-Traded Fund Shares” to the definition of Equity Security.

ETF Shares that meet the criteria of Rule 14.12.

Proposed Rule 14.12(b) provides that Rule 14.12 is applicable only to ETF Shares and that, except to the extent inconsistent with Rule 14.12, or unless the context otherwise requires, the rules and procedures of the Exchange’s Board of Directors shall be applicable to the trading on the Exchange of such securities. Proposed Rule 14.12(b) provides further that ETF Shares are included within the definition of “security” or “securities” as such terms are used in the Rules of the Exchange.

Proposed Rule 14.12(b)(1) provides that transactions in ETF Shares will occur throughout the Exchange’s trading hours.

Proposed Rule 14.12(b)(2) provides that the minimum price variation for quoting and entry of orders in ETF Shares will be \$0.01.

Proposed Rule 14.12(b)(3) provides that the Exchange will implement and maintain written surveillance procedures for ETF Shares.

Proposed Rule 14.12(c)(1) defines the term “ETF Shares” as shares of stock issued by an Exchange-Traded Fund.<sup>10</sup>

Proposed Rule 14.12(c)(2) defines the term “Exchange-Traded Fund” as having the same meaning as the term “exchange-traded fund” as defined in Rule 6c-11 under the Investment Company Act of 1940.<sup>11</sup>

Proposed Rule 14.12(c)(3) defines the term “Reporting Authority” in respect of a particular series of ETF Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of ETF Shares (if the Exchange is trading such series pursuant to UTP) as the official source for calculating and reporting information relating to such series, including, but not limited to, the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares, the net asset value (the “NAV”), index or portfolio value, the current value of the portfolio of securities required to be deposited in connection with issuance of ETF Shares, or other information relating to the issuance, redemption or trading of ETF

<sup>10</sup> For purposes of this filing, references to a series of Exchange-Traded Fund Shares are referred to interchangeably as a series of Exchange-Traded Fund Shares or as a “Fund” and shares of a series of Exchange-Traded Fund Shares are generally referred to as the “Shares”.

<sup>11</sup> Per Rule 6c-11, an exchange-traded fund means a registered open-end management company: (A) That issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (B) Whose shares are listed on a national securities exchange and traded at market-determined prices.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> ETF Shares means shares of stock issued by an Exchange-Traded Fund. See proposed Rule 14.12(c)(1).

Shares. A series of ETF Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.12(d) provides for the initial and continued listing and/or trading of ETF Shares, including trading pursuant to UTP, pursuant to Rule 19b4–(e) under the Act. Proposed Rule 14.12(d)(1) sets forth initial listing criteria applicable to ETF Shares. Specifically, proposed Rule 14.12(d)(1) provides that the requirements of Rule 6c-11 must be satisfied by a series of ETF Shares on an initial and continued listing basis. Such securities must also satisfy the criteria on an initial and, with the exception of proposed subparagraph (d)(1)(A), a continued listing basis. Proposed Rule 14.12(d)(1)(A) provides that for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange. However, as noted above, such criteria is not applicable on a continued listing basis. Proposed rule 14.12(d)(1)(B) provides that if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a “fire wall” around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF 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 Exchange-Traded Fund’s portfolio. Additionally proposed rule 14.12(d)(1)(C) provides that any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be

listed and traded subject to application of the following continued listing criteria. Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing or termination of unlisted trading privileges for a series of ETF Shares under any of the following circumstances: (i) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) 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 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange will require that ETF Shares issued in connection with such entity be removed from Exchange listing.

Proposed Rule 14.12(e), which relates to limitation of Exchange liability, 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 index or 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 ETF Shares; the amount of any dividend equivalent payment or cash distribution to holders of ETF Shares; net asset value; or other information relating to the purchase, redemption, or trading of ETF 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.

The Exchange does not propose to adopt BZX Rule 14.11(l)(6) because it is

not applicable as the Exchange does not currently have any listed products.

#### Quantitative Standards

The Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices because the Exchange will perform ongoing surveillance of ETF Shares listed on the Exchange in order to ensure compliance with Rule 6c-11 and the 1940 Act on an ongoing basis. While proposed Rule 14.12 does not include the quantitative requirements applicable to an ETF or an ETF’s holdings or underlying index that are included in Rule 14.2, the Exchange believes that the manipulation concerns that such standards are intended to address are otherwise mitigated by a combination of the Exchange’s surveillance procedures and the Exchange’s ability to suspend trading or terminate unlisted trading privileges under the proposed Rule 14.12(d)(2)(A). The Exchange will also halt trading in ETF Shares under the conditions specified in Rule 11.16, “Trading Halts Due to Extraordinary Market Volatility.” The Exchange believes that such concerns are further mitigated by enhancements to the arbitrage mechanism that will come from Rule 6c–11, specifically the additional flexibility provided to issuers of ETF Shares through the use of custom baskets for creations and redemptions and the additional information made available to the public through the additional daily website disclosure obligations applicable under Rule 6c–11.<sup>12</sup> The Exchange believes that the combination of these factors will act to keep ETF Shares trading near the value of their underlying holdings and further mitigate concerns around manipulation of ETF Shares on the Exchange without the inclusion of quantitative standards.<sup>13</sup>

#### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of ETF 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 ETF Shares through the

<sup>12</sup> The Exchange notes that the Commission came to a similar conclusion in several places in the Rule 6c-11 Release. See Release Nos. 33–10695; IC–33646; File No. S7–15–18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “Rule 6c–11 Release”) at 15–18; 60–61; 69–70; 78–79; 82–84; and 95–96.

<sup>13</sup> The Exchange believes that this applies to all quantitative standards, whether applicable to the portfolio holdings of a series of ETF Shares or the distribution of the ETF Shares.

Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of ETF 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.

Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the Financial Industry Regulatory Authority, Inc. ("FINRA"), on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the Intermarket Surveillance Group ("ISG") or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA's Trade Reporting and Compliance Engine ("TRACE"). FINRA also can access data obtained from the Municipal Securities Rulemaking Board's ("MSRB") Electronic Municipal Market Access ("EMMA") system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

#### Trading Halts

As proposed above, the Exchange may consider all relevant factors in exercising its discretion to halt trading in a series of Managed Portfolio Shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the series of ETF Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities and/or the financial instruments composing the portfolio; or

(ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Additionally, the Exchange would halt trading as soon as practicable where the Exchange becomes aware that: (i) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

#### Trading Rules

The Exchange deems ETF Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. ETF Shares will trade on the Exchange throughout the Exchange's trading hours. As provided in proposed Rule 14.12(b)(2), the minimum price variation for quoting and entry of orders in ETF Shares traded on the Exchange is \$0.01.

#### 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act<sup>14</sup> in general and Section 6(b)(5) of the Act<sup>15</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

The Exchange believes that proposed Rule 14.12 will remove impediments to and perfect the mechanism of a free and open market and national market system. Specifically, the proposed amendment raises no substantive issues that have not otherwise been considered by the Commission in either the BZX Approval Order or in the context of other similar Exchange Rules. This proposal is substantively similar to the BZX Approval Order, with the exception that the Exchange is only proposing to trade series of ETF Shares

pursuant to unlisted trading privileges, while BZX will both list and trade series of ETF Shares. Further, while proposed Rule 14.12(d)(2)(A) provides that the Exchange may terminate unlisted trading privileges and BZX Rule 14.11(l) does not, the proposed rule text is substantially similar to existing Exchange Rules 14.3(g)(2) and 14.11(d)(2)(B) and therefore raises no novel issues.

The Exchange believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading ETF Shares on the Exchange provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.12(d) sets forth initial and continued listing criteria applicable to ETF Shares, specifically providing that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the Investment Company Act of 1940 and must satisfy the requirements of this Rule 14.12 on an initial and continued listing basis.

Proposed Rule 14.12(d)(1) provides that initial listing criteria which includes (A) for each series, the Exchange will establish a minimum number of ETF Shares required to be outstanding at the time of commencement of trading on the Exchange; (B) if an index underlying a series of ETF Shares is maintained by a broker-dealer or fund adviser, the broker-dealer or fund adviser shall erect and maintain a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer or fund adviser. If the investment adviser to the investment company issuing an actively managed series of ETF 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 Exchange-Traded Fund's portfolio; and (C) any advisory committee, supervisory board, or similar entity that advises a Reporting Authority or that makes decisions on the composition, methodology, and related matters of an index underlying a series of ETF Shares, must implement and maintain, or be subject to, procedures designed to prevent the use

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(5).

and dissemination of material non-public information regarding the applicable index. For actively managed Exchange-Traded Funds, personnel who make decisions on the portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable portfolio.

Proposed Rule 14.12(d)(2) provides that each series of ETF Shares will be listed and traded on the Exchange subject to application of Proposed Rule 14.12(d)(2)(A) and (B). Proposed Rule 14.12(d)(2)(A) provides that the Exchange will consider the suspension of trading in or removal from listing of or termination of UTP for a series of ETF Shares under any of the following circumstances: (i) If the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c–11 under the Investment Company Act of 1940; (ii) if any of the other listing requirements set forth in this Rule 14.12 are not continuously maintained; (iii) if, following the initial twelve month period after commencement of trading on the Exchange of a series of ETF Shares, there are fewer than 50 beneficial holders of the series of ETF Shares for 30 or more consecutive trading days; or (iv) 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 14.12(d)(2)(B) provides that upon termination of an investment company, the Exchange requires that ETF Shares issued in connection with such entity be removed from Exchange listing.

The Exchange further believes that proposed Rule 14.12 is designed to prevent fraudulent and manipulative acts and practices because of the robust surveillances in place on the Exchange as required under proposed Rule 14.12(b)(3) along with the similarities of proposed Rule 14.12 to the rules related to other securities that are already traded on the Exchange pursuant to UTP and which would qualify as ETF Shares. Proposed Rule 14.12 is based in large part on Rule 14.2 related to the listing and trading of Investment Company Units on the Exchange, which are issued under the 1940 Act and would qualify as ETF Shares after Rule 6c–11 is effective. As such, the Exchange believes that using Rule 14.2 (the “Current ETF Standards”) as the basis for proposed Rule 14.12 is appropriate because they are generally designed to address the issues associated with ETF Shares. The only substantial differences between proposed Rule 14.12 and the

Current ETF Standards that are not otherwise required under Rule 6c–11 are as follows: (i) proposed Rule 14.12 does not include the quantitative standards applicable to a fund or an index that are included in the Current ETF Standards; and (ii) proposed Rule 14.12 does not include any requirements related to the dissemination of a fund’s intraday indicative value.<sup>16</sup>

Further, the Exchange also represents that its surveillance procedures are adequate to properly monitor the trading of the ETF Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. Specifically, the Exchange intends to utilize its existing surveillance procedures applicable to derivative products, which are currently applicable to Investment Company Units, among other product types, to monitor trading in ETF Shares. The Exchange or the FINRA, on behalf of the Exchange, will communicate as needed regarding trading in ETF Shares and certain of their applicable underlying components with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange may obtain information regarding trading in ETF Shares and certain of their applicable underlying components from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Additionally, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities that may be held by a series of ETF Shares reported to FINRA’s TRACE. FINRA also can access data obtained from the MSRB EMMA system relating to municipal bond trading activity for surveillance purposes in connection with trading in a series of ETF Shares, to the extent that a series of ETF Shares holds municipal securities.

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

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the trading, pursuant to UTP, of ETF Shares that will enhance 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 neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b–4(f)(6) thereunder.<sup>18</sup>

A proposed rule change filed under Rule 19b–4(f)(6)<sup>19</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to immediately allow ETF Shares to be traded on another venue. The Commission believes that waiver of the 30-day operative delay for this purpose is consistent with the protection of investors and the public interest and hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>21</sup>

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

<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>19</sup> 17 CFR 240.19b–4(f)(6).

<sup>20</sup> 17 CFR 240.19b–4(f)(6)(iii).

<sup>21</sup> For purposes only of waiving the operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>16</sup> For purposes of this filing, the term “intraday indicative value” or “IIV” shall mean an intraday estimate of the value of a share of each series Investment Company Units.

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 will institute proceedings 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGA-2020-013 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-CboeEDGA-2020-013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should

submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGA-2020-013 and should be submitted on or before June 4, 2020.

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

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-10288 Filed 5-13-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88839; File No. SR-FINRA-2020-014]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 9231 To Provide for the Compensation of All Panelists That Serve in Connection With a FINRA Disciplinary Hearing

May 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 5, 2020, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to amend FINRA Rule 9231 to provide for the compensation of all panelists that serve in connection with a FINRA

disciplinary hearing, regardless of whether it is an Extended or non-Extended Hearing.<sup>4</sup>

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 9231 governs the appointment by FINRA's Chief Hearing Officer of Hearing Panels, both Extended and non-Extended, and replacement Hearing Officers.

A Hearing Panel consists of a Hearing Officer and two Panelists.<sup>5</sup> Each Panelist must be associated with a FINRA member or retired therefrom.<sup>6</sup> Service as a Panelist is voluntary.

Rule 9231 authorizes the Chief Hearing Officer to exercise his or her discretion to compensate Panelists who serve on Extended Hearing Panels only. The proposed rule change would amend Rule 9231 to provide for the compensation of all Panelists, irrespective of whether they serve on Extended or non-Extended Hearing Panels, and without the exercise of discretion by the Chief Hearing Officer. FINRA believes the proposed rule change will encourage a greater and more diverse pool of eligible individuals

<sup>4</sup> FINRA Rule 9231(c) sets forth the circumstances in which a hearing may be designated an Extended Hearing. Matters that require an Extended Hearing are assigned an Extended Hearing Panel. For the purposes of this proposal only, the term "Hearing Panel" collectively refers to both Extended and non-Extended Hearing Panels.

<sup>5</sup> See FINRA Rule 9231(b) and (c). If, after appointment, a Panelist withdraws, is unable to serve, or is disqualified, the Chief Hearing Officer may, in his or her discretion, determine whether to appoint a replacement Panelist. If two Panelists withdraw, are unable to serve, or are disqualified, the Chief Hearing Officer must appoint two replacement Panelists. See FINRA Rule 9234.

<sup>6</sup> See FINRA Rule 9231(b) and (c).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)

requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.