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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86155; File No. SR-CboeBZX-2019-057]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to List and Trade Shares of the American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF Under Currently Proposed Rule 14.11(k)**

June 19, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 6, 2019, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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 list and trade shares of the following under currently proposed Rule 14.11(k): American Century Focused Dynamic Growth ETF and American Century Focused Large Cap Value ETF (each a “Fund” and, collectively, the “Funds”).

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

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

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/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange has submitted a proposal to add new Rule 14.11(k) for the purpose of permitting the listing and trading of Managed Portfolio Shares, which are securities issued by an actively managed open-end investment management company, which has not yet been published by the Commission.<sup>3</sup> Proposed Rule 14.11(k)(2)(A) would require the Exchange to file separate

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<sup>3</sup> As proposed, the term "Managed Portfolio Share" means a security that (a) represents an interest in a registered investment company ("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 aggregate minimum number of shares equal to a Creation Unit, or multiples thereof, in return for a designated portfolio of securities (and/or an amount of cash) with a value equal to the next determined net asset value which the AP Representative (defined below) will provide through a confidential account; and (c) when aggregated in the same specified aggregate number of shares equal to a Redemption Unit, or multiples thereof, may be redeemed at the request of an Authorized Participant (as defined in the Investment Company's Form N-1A filed with the SEC), which Authorized Participant will be paid through a confidential account established for its benefit a portfolio of securities and/or cash with a value equal to the next determined net asset value. See SR-CboeBZX-2019-

proposals under Section 19(b) of the Act before listing and trading any series of Managed Portfolio Shares on the Exchange. As such, the Exchange is submitting this proposal in order to list and trade shares of the American Century Focused Dynamic Growth ETF and the American Century Focused Large Cap Value ETF under proposed Rule 14.11(k).

#### Description of the Funds and the Trust

The shares of each Fund will be issued by American Century ETF Trust (the “Trust”), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.<sup>4</sup> The investment adviser to the Trust will be American Century Investment Management, Inc. (the “Adviser”). Foreside Fund Services, LLC (the “Distributor”) will serve as the distributor of each of the Fund’s shares. 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

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047 (the “Proposal”).

<sup>4</sup> The Trust is registered under the 1940 Act. On June 18, 2018, the Trust filed a registration statement on Form N-1A relating to the Funds (File No. 811-23305) (the “Registration Statement”). The Exchange notes that the names of the Funds have been changed since the Registration Statement was filed and that such names will be updated in a subsequent filing. The Shares will not be listed on the Exchange until an order (“Exemptive Order”) under the 1940 Act has been issued by the Commission with respect to the application for exemptive relief (the “Exemptive Application”) (File No. 812-15035). Investments made by the Funds will comply with the conditions set forth in the Exemptive Order. The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statement. The Exchange notes that the Exemptive Application is very similar to the application for exemptive relieve submitted by Precidian ETFs Trust, et al. for which an order granting the requested relief was issued on May 20, 2019 (File No. 812-14405) (the “Order”). 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.” See Investment Company Act Release Nos. 33440 and 33477.

availability of VIIV, reference assets, and intraday indicative values, and the applicability of Exchange rules shall constitute continued listing requirements for listing the shares on the Exchange.

Proposed Rule 14.11(k)(2)(E) provides that, if the investment adviser to the investment company issuing Managed Portfolio Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition and/or changes to such investment company portfolio.<sup>5</sup> In addition, proposed Rule 14.11(k)(2)(E) further requires personnel who make decisions on the Investment Company’s portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio. Proposed Rule 14.11(k)(2)(E) is similar to Rule 14.11(i)(7), related to Managed Fund Shares, and Rule 14.11(c)(5)(A)(i), related to Index Fund Shares, except that proposed Rule 14.11(k)(2)(E) relates

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<sup>5</sup> An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the “Advisers Act”). As a result, the Adviser and its related personnel will be subject to the provisions of Rule 204A-1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A-1 under the Advisers Act. In addition, Rule 206(4)-7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violations, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

to the establishment of a “fire wall” between the investment adviser and the broker-dealer as applicable to an Investment Company’s portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund’s portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The portfolio for each Fund will consist primarily of U.S. exchange-listed equity securities and shares issued by other U.S. exchange-listed ETFs.<sup>6</sup> All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges.

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<sup>6</sup> For purposes of describing the holdings of the Funds, ETFs include Portfolio Depository Receipts (as described in Rule 14.11(b)); Index Fund Shares (as described in Rule 14.11(c)); and Managed Fund Shares (as described in Rule 14.11(i)). The ETFs in which a Fund will invest all will be listed and traded on U.S. national securities exchanges. While the Funds may invest in inverse ETFs, the Funds will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

## Description of the Funds

### American Century Focused Dynamic Growth ETF

The Fund seeks long-term capital growth. Under Normal Market Conditions,<sup>7</sup> the Fund intends to invest primarily in U.S. exchange-listed equity securities. The portfolio managers look for stocks of companies they believe will increase in value over time. In implementing this strategy, the portfolio managers make their investment decisions based primarily on their analysis of individual companies, rather than on broad economic forecasts. Management of the Fund is based on the belief that, over the long term, stock price movements follow growth in earnings, revenues and/or cash flow. The portfolio managers use a variety of analytical research tools and techniques to identify the stocks of companies that meet their investment criteria.

In addition to investing primarily in U.S. exchange-listed equity securities, the Fund may also invest in exchange-traded funds, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents<sup>8</sup> without limitation.

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<sup>7</sup> 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.

<sup>8</sup> For purposes of this filing and consistent with Rule 14.11(i)(4)(C)(iii) related to Managed Fund Shares, Cash Equivalents are short-term instruments with maturities of less than three months, which includes only the following: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

The 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 Managed Portfolio 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 Managed Portfolio Shares.

#### American Century Focused Large Cap Value ETF

The Fund seeks long-term capital growth. Under Normal Market Conditions, the Fund intends to invest primarily in U.S. exchange-listed equity securities. The portfolio managers look for companies whose stock price may not reflect the company's value. The managers attempt to purchase the stocks of these undervalued companies and hold each stock until the price has increased to, or is higher than, a level the managers believe more accurately reflects the fair value of the company. The portfolio managers may sell stocks from the fund's portfolio if they believe a stock no longer meets their valuation criteria, a stock's risk parameters outweigh its return opportunity, more attractive alternatives are identified or specific events alter a stock's prospects.

In addition to investing primarily in U.S. exchange-listed equity securities, the Fund may also invest in exchange-traded funds, exchange-listed ADRs, U.S. exchange-listed equity futures contracts, and U.S. exchange-listed equity index futures contracts. The Fund may also hold cash and Cash Equivalents without limitation.

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 Managed Portfolio 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 Managed Portfolio Shares.

#### Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its total assets in illiquid assets,<sup>9</sup> consistent with Commission guidance. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.<sup>10</sup> In any event, the Funds will not purchase any securities that are illiquid investments at the time of purchase.

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<sup>9</sup> In reaching liquidity decisions, the Adviser may consider the following factors: the frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (e.g., the time needed to dispose of the security, the method of soliciting offers and the mechanics of transfer).

<sup>10</sup> The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. See Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. See also, Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding “Restricted Securities”); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N-1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. See Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933). The Commission recently codified this long standing position in Rule 22e-4. See Investment Company Act Release No. 32315 (October 13, 2016), 81 FR 82142 (November 18, 2016) (adopting requirements for investment company liquidity risk management programs).

According to the Registration Statement, each Fund will seek to qualify for treatment as a Regulated Investment Company (“RIC”) under the Internal Revenue Code.<sup>11</sup>

The shares of each Fund will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in forwards or swaps.

Each Fund’s investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

#### Creations and Redemptions of Shares

Creations and redemptions of the shares will occur as described in the Proposal. More specifically, in connection with the creation and redemption of Creation Units and Redemption Units, the delivery or receipt of any portfolio securities in-kind will be required to be effected through a separate confidential brokerage account (a “Confidential Account”). Authorized Participants (as defined in the Funds’ registration statements, “AP”) will sign an agreement with an agent (an “AP Representative”<sup>12</sup>) establishing the Confidential Account for the benefit of the AP. AP Representatives will be broker-dealers. An AP must be a Depository Trust Company (“DTC”) Participant that has executed a “Participant Agreement” with the Distributor with respect to the creation and redemption of Creation Units and Redemption Units and formed a Confidential Account for its benefit in accordance with the terms of the Participant Agreement. For purposes of creations or redemptions, all transactions will be effected through the respective AP’s Confidential Account, for the benefit of the AP without disclosing the identity of such securities to the AP.

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<sup>11</sup> 26 U.S.C. 851.

<sup>12</sup> Each AP shall enter into its own separate Confidential Account agreement (“Confidential Account Agreement”) with an AP Representative.

Each AP Representative will be given, before the commencement of trading each Business Day (defined below), the Creation Basket (as described below) for that day. This information will permit an AP that has established a Confidential Account with an AP Representative, to instruct the AP Representative to buy and sell positions in the portfolio securities to permit creation and redemption of Creation Units and Redemption Units. Shares of each Fund will be issued in Creation Units of 5,000 or more shares. The Funds will offer and redeem Creation Units and Redemption Units on a continuous basis at the NAV per share next determined after receipt of an order in proper form. The NAV per share of each Fund will be determined as of the close of regular trading on the Exchange on each day that the Exchange is open (a “Business Day”). The Funds will sell and redeem Creation Units and Redemption Units only on Business Days. The Adviser anticipates that the initial price of a share will range from \$20 to \$60, and that the price of a Creation Unit will be at least \$100,000.

To keep costs low and permit each Fund to be as fully invested as possible, shares will be purchased and redeemed in Creation Units and Redemption Units and generally on an in-kind basis. Accordingly, except where the purchase or redemption will include cash under the circumstances described in the Registration Statement, APs will be required to purchase Creation Units by making an in-kind deposit of specified instruments (“Deposit Instruments”), and APs redeeming their shares will receive an in-kind transfer of specified instruments (“Redemption Instruments”) through the AP Representative in their Confidential Account.<sup>13</sup> On any given Business Day, the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will

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<sup>13</sup> The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration under the 1933 Act.

be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the “Creation Basket.”<sup>14</sup>

#### Placement of Purchase Orders

Each Fund will issue shares through the Distributor on a continuous basis at NAV. The Exchange represents that the issuance of shares will operate in a manner similar to that of other ETFs. Each Fund will issue shares only at the NAV per share next determined after an order in proper form is received.

In the case of a creation, the AP would enter an irrevocable creation order with the Fund and then direct the AP Representative to purchase the necessary basket of portfolio securities. The AP Representative would then purchase the necessary securities in the Confidential Account. In purchasing the necessary securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket. Once the necessary basket of securities has been acquired, the purchased securities held in the Confidential Account would be contributed in-kind to the Fund.

The Distributor will furnish acknowledgements to those placing such orders that the orders have been accepted, but the Distributor may reject any order which is not submitted in proper form, as described in a Fund’s prospectus or Statement of Additional Information (“SAI”). The NAV of each Fund is expected to be determined once each Business Day at a time determined by the Trust’s Board of Trustees (“Board”), currently anticipated to be as of the close

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<sup>14</sup> In determining whether a particular Fund will sell or redeem Creation Units entirely on a cash or in-kind basis, whether for a given day or a given order, the key consideration will be the benefit that would accrue to a Fund and its investors. To the extent a fund allows creations or redemptions to be conducted in cash, such transactions will be effected in the same manner for all APs.

of the regular trading session on the Exchange (ordinarily 4:00 p.m. E.T.) (the “Valuation Time”). Each Fund will establish a cut-off time (“Order Cut-Off Time”) for purchase orders in proper form. To initiate a purchase of shares, an AP must submit to the Distributor an irrevocable order to purchase such shares after the most recent prior Valuation Time. All orders to purchase Creation Units must be received by the Distributor no later than the Order Cut-Off Time in each case on the date such order is placed (“Transmittal Date”) for the purchaser to receive the NAV per share determined on the Transmittal Date.

Purchases of shares will be settled in-kind and/or cash for an amount equal to the applicable NAV per share purchased plus applicable “Transaction Fees,” as discussed below.

#### Authorized Participant Redemption

The shares may be redeemed to a Fund in Redemption Unit size or multiples thereof as described below. Redemption orders of Redemption Units must be placed by an AP (“AP Redemption Order”). Each Fund will establish an Order Cut-Off Time for redemption orders of Redemption Units in proper form. Redemption Units of the Fund will be redeemable at their NAV per share next determined after receipt of a request for redemption by the Trust in the manner specified below before the Order Cut-Off Time. To initiate an AP Redemption Order, an AP must submit to the Distributor an irrevocable order to redeem such Redemption Unit after the most recent prior Valuation Time, but not later than the Order Cut-Off Time.

In the case of a redemption, the AP would enter into an irrevocable redemption order, and then immediately instruct the AP Representative to sell the underlying basket of securities that it will receive in the redemption. As with the purchase of securities, the AP Representative will use methods, such as breaking the transaction into multiple transactions and transacting in multiple marketplaces, to avoid revealing the composition of the Creation Basket.

Consistent with the provisions of Section 22(e) of the 1940 Act and Rule 22e-2 thereunder, the right to redeem will not be suspended, nor payment upon redemption delayed, except for: (1) any period during which the Exchange is closed other than customary weekend and holiday closings, (2) any period during which trading on the Exchange is restricted, (3) any period during which an emergency exists as a result of which disposal by a Fund of securities owned by it is not reasonably practicable or it is not reasonably practicable for a Fund to determine its NAV, and (4) for such other periods as the Commission may by order permit for the protection of shareholders.

Redemptions will occur primarily in-kind, although redemption payments may also be made partly or wholly in cash.<sup>15</sup> The Participant Agreement signed by each AP will require establishment of a Confidential Account to receive distributions of securities in-kind upon redemption. Each AP will be required to open a Confidential Account with an AP Representative in order to facilitate orderly processing of redemptions. While a Fund will generally distribute securities in-kind, the Adviser may determine from time to time that it is not in a Fund's best interests to distribute securities in-kind, but rather to sell securities and/or distribute cash. For example, the Adviser may distribute cash to facilitate orderly portfolio management in connection with rebalancing or transitioning a portfolio in line with its investment objective, or if there is substantially more creation than redemption activity during the period immediately preceding a redemption request, or as necessary or appropriate in accordance with applicable laws and regulations.

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<sup>15</sup> The value of any positions not susceptible to in-kind settlement may be paid in cash.

The Redemption Instruments will consist of the same securities for all APs on any given day subject to the Adviser's ability to make minor adjustments to address odd lots, fractional shares, tradeable sizes or other situations.

#### Net Asset Value

The NAV per share of a Fund will be computed by dividing the value of the net assets of a Fund (i.e., the value of its total assets less total liabilities) by the total number of shares of a Fund outstanding, rounded to the nearest cent. Expenses and fees, including, without limitation, the management, administration and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. Interest and investment income on the Trust's assets accrue daily and will be included in the Fund's total assets. The NAV per share for a Fund will be calculated by a Fund's administrator ("Administrator") and determined as of the close of the regular trading session on the Exchange (ordinarily 4:00 p.m., E.T.) on each day that the Exchange is open.

Shares of U.S. exchange-listed equity securities, exchange-traded funds, exchange-listed ADRs, and U.S. exchange-listed futures will be valued at market value, which will generally be determined using the last reported official closing or last trading price on the exchange or market on which the securities are primarily traded at the time of valuation. Cash Equivalents will generally be valued on the basis of independent pricing services or quotes obtained from brokers and dealers or price quotations or other equivalent indications of value provided by a third-party pricing service.

#### Availability of Information

The Funds' website ([www.americancenturyetfs.com](http://www.americancenturyetfs.com)), which will be publicly available prior to the listing and trading of shares, will include a form of the prospectus for each Fund that

may be downloaded. The Funds' website will include additional quantitative information updated on a daily basis, including, for each Fund, (1) the prior Business Day's NAV, market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),<sup>16</sup> and a calculation of the premium and discount of the market closing price or Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website and information will be publicly available at no charge.

The Trust's SAI and each Fund's shareholder reports will be available free upon request from the Trust. These documents and forms may be viewed on-screen or downloaded from the Commission's website at [www.sec.gov](http://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. Quotation and last sale information for the shares will be available via the Consolidated Tape Association ("CTA") high-speed line. In addition, the VIIV, as defined in proposed Rule 14.11(k)(3)(B) and as described further below, will be widely disseminated by one or more major market data vendors in one-second intervals during Regular Trading Hours.

#### Dissemination of the VIIV

According to the Exemptive Application, the pricing verification agent, on behalf of each Fund, will utilize two separate calculation engines to calculate intra-day indicative values ("Calculation Engines"), generally based on the mid-point between the current national best bid

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<sup>16</sup> The Bid/Ask Price of a Fund will be determined using the mid-point between the current NBB and NBO as of the time of calculation of a Fund's NAV. The records relating to Bid/Ask Prices will be retained by each Fund and its service providers.

and offer disseminated by the Consolidated Quotation System (“CQS”) and Unlisted Trading Privileges (“UTP”) Plan Securities Information Processor,<sup>17</sup> to provide the estimated real-time value on a per Share basis every second during the Exchange’s Regular Trading Hours.<sup>18</sup> The specific methodology for calculating and disclosing the VIIV will be disclosed on each Fund’s website. The VIIV should not be viewed as a “real-time” update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day. The VIIV for each Fund will be disseminated by one or more major market data vendors in one-second intervals during Regular Trading Hours. For purposes of the VIIV, securities held by a Fund will be valued throughout the day based on the mid-point between the disseminated current national best bid and offer. If the Adviser determines that a portfolio security does not have a readily available market quotation, that fact, along with the identity and weighting of that security in a Fund’s VIIV calculation, will be publicly disclosed on each Fund’s website.

#### Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the shares of the Funds. The Exchange will halt trading in the shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in

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<sup>17</sup> According to the Exemptive Application, all Commission-registered exchanges and market centers send their trades and quotes to a central consolidator where the Consolidated Tape System (CTS) and CQS data streams are produced and distributed worldwide. See <https://www.ctapl.com/index>. Although there is only one source of market quotations, each Calculation Engine will receive the data directly and calculate an indicative value separately and independently from each other Calculation Engine.

<sup>18</sup> The Adviser represents that the dissemination of VIIV at one second intervals strikes a balance of providing all investors with usable information at a rate that can be processed by retail investors, does not provide so much information so as to allow market participants to accurately determine the constituents, and their weightings, of the portfolio, can be accurately calculated and disseminated, and still provides professional traders with per second data.

the shares inadvisable, including whether unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the shares also will be subject to proposed Rule 14.11(k)(4)(B)(iii) in the Proposal, which sets forth circumstances under which shares of the Funds will be halted.

### Trading Rules

The Exchange deems the shares to be equity securities, thus rendering trading in the shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the Exchange only during Regular Trading Hours as provided in proposed Rule 14.11(k)(2)(B). As provided in BZX Rule 11.11(a), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is \$0.01, with the exception of securities that are priced less than \$1.00, for which the minimum price variation for order entry is \$0.0001.

The shares will conform to the initial and continued listing criteria under Rule 14.11(k). The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A-3 under the Act.<sup>19</sup> A minimum 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.

### Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative

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<sup>19</sup> See 17 CFR 240.10A-3.

products, including Managed Portfolio Shares. The issuer has represented 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.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the shares, underlying 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 securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the shares, underlying stocks 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.<sup>20</sup>

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

#### Information Circular

Prior to the commencement of trading, 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

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<sup>20</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

information regarding the VIIV 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; and (5) trading information.

In addition, the Circular will reference that the 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.

## 2. Statutory Basis

The Exchange believes that the Proposal is consistent with Section 6(b) of the Act<sup>21</sup> in general and Section 6(b)(5) of the Act<sup>22</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, to the extent that the Proposal and, thus proposed Rule 14.11(k) is approved by the Commission, this proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Funds would meet each of the rules relating to listing and trading of Managed Portfolio Shares and, to the extent that a Fund is not in compliance with such rules, the Exchange would either prevent the Fund from listing and trading if it hadn't started trading on the Exchange or would commence delisting procedures under Exchange Rule 14.12. More specifically, the Exchange will consider the suspension of trading in, and will commence delisting proceedings under Rule 14.12 for, a series of Managed Portfolio

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<sup>21</sup> 15 U.S.C. 78f.

<sup>22</sup> 15 U.S.C. 78f(b)(5).

Shares 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 Managed Portfolio Shares, there are fewer than 50 beneficial holders of the series of Managed Portfolio Shares; (b) if the value of the VIIV is no longer calculated or available to all market participants at the same time; (c) if the holdings of a series of Managed Portfolio Shares are not made available on a quarterly basis as required under the 1940 Act or are not made available to all market participants at the same time; (d) if the Investment Company issuing the Managed Portfolio 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 Managed Portfolio Shares; (e) if any of the continued listing requirements set forth in Rule 14.11(k) are not continuously maintained; (f) if any of the applicable Continued Listing Representations for the issue of Managed Fund Shares are not continuously met; or (g) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

The Adviser is not registered as a broker-dealer, but is affiliated with a broker-dealer and has implemented and will maintain a “fire wall” with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund’s portfolio.

In the event (a) the Adviser becomes registered as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or its broker-dealer affiliate regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures

designed to prevent the use and dissemination of material non-public information regarding such portfolio.

With respect to the proposed listing and trading of shares of the Funds, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in Rule 14.11(k). Price information for the U.S. exchange-listed equity securities held by the Funds will be available through major market data vendors or securities exchanges listing and trading such securities. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Funds will primarily hold U.S.-listed equity securities. All exchange-listed equity securities in which the Funds will invest will be listed and traded on U.S. national securities exchanges. A Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage. The Funds will not invest in non-U.S. exchange-listed securities. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the shares, underlying stocks and U.S. exchange-listed futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such securities from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the shares, underlying stocks, 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. An AP Representative will provide information related to creations and redemption of Creation Units and Redemption Units to FINRA upon request.

With respect to trading of shares of the Funds, the ability of market participants to buy and sell shares at prices near the VIIV is dependent upon their assessment that the VIIV is a reliable, indicative correlated value for a Fund's underlying holdings. Market participants may view the VIIV as a reliable, indicative correlated value because (1) the VIIV will be calculated and disseminated based on a Fund's actual portfolio holdings, (2) the securities in which the Funds plan to invest are generally highly liquid and actively traded and therefore generally have accurate real time pricing available, and (3) market participants will have a daily opportunity to evaluate whether the VIIV at or near the close of trading is indeed predictive of the actual NAV.<sup>23</sup> The Exchange, however, notes that the VIIV should not be viewed as a "real-time" update of NAV because the VIIV may not be calculated in the same manner as NAV, which is computed once per day.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of an issue of Managed Portfolio Shares that the NAV per share of the Funds will be calculated daily and that the NAV will be made available to all market participants at the same time. Investors can also obtain a Fund's SAI, shareholder reports, Form N-CSR, and Form N-PORT. A Fund's SAI and shareholder reports will be available free upon request from the applicable fund, and those documents and the Form N-CSR and Form N-PORT may be viewed on-screen or downloaded from the Commission's website. In addition, with respect to the Funds, a large amount of information will be publicly available regarding the Funds and the shares, thereby promoting market transparency. Quotation and last sale information for the shares will

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<sup>23</sup> The statements in the Statutory Basis section of this filing relating to pricing efficiency, arbitrage, and activities of market participants, including market makers and APs, are based on representation by the Adviser and review by the Exchange.

be available via the CTA high-speed line. Information regarding the VIIV will be widely disseminated every second throughout Regular Trading Hours by one or more major market data vendors. The website for the Funds will include a prospectus for the Funds that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis.

Moreover, prior to the commencement of trading, the Exchange will inform its members in a Circular of the special characteristics and risks associated with trading the shares. The Exchange will halt trading in the shares under the conditions specified in BZX Rule 11.18 or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. Trading in the shares will be subject to proposed Rule 14.11(k)(4)(B)(iii), which sets forth circumstances under which shares of the Funds will be halted. In addition, as noted above, investors will have ready access to the VIIV, and quotation and last sale information for the shares. The shares will conform to the initial and continued listing criteria under proposed Rule 14.11(k). The Funds will not invest in forwards or swaps. Each Fund's investments will be consistent with its investment objective and will not be used to enhance leverage. While a Fund may invest in inverse ETFs, a Fund will not invest in leveraged (e.g., 2X, -2X, 3X or -3X) ETFs.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as

noted above, investors will have ready access to information regarding the VIIV and quotation and last sale information for the shares.

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 listing and trading of actively-managed exchange-traded products 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-057 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-2019-057. 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-2019-057 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.<sup>24</sup>

**Vanessa A. Countryman,**

*Acting Secretary.*

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<sup>24</sup> 17 CFR 200.30-3(a)(12).

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