

### III. Discussion and Commission Findings

After careful review of the proposal, as modified by Amendment Nos. 1 and No. 2, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>24</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>25</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Under amended Exchange Rule 49, the Exchange would maintain its own Disaster Recovery Facility to continue Exchange operations when necessary without substantial disruption to member organizations. This Disaster Recovery Facility would allow the Exchange to no longer designate NYSE Arca as its backup facility but instead operate as a fully electronic exchange on its own facilities, under its own trading rules, with its own order book and with quotes and trades publicly reported under the Exchange's own reporting symbol. The proposed rule change would also require member organizations to participate in scheduled functional and performance testing of the Exchange's business continuity and disaster recovery plans in the manner and frequency specified by the Exchange, which shall not be less than once every 12 months.<sup>26</sup>

Under the proposal, the Exchange CEO would be authorized to make a determination for the Exchange to trade securities on the Disaster Recovery Facility only when the CEO deems such action to be necessary or appropriate for the maintenance of a fair and orderly market, or for the protection of investors or otherwise in the public interest, due to extraordinary circumstances. The Exchange CEO must notify the Exchange board of directors as soon as feasible if

the CEO makes a determination to use the Disaster Recovery Facility.

The Commission believes that the proposal is reasonably designed to permit the Exchange to continue to operate in the event of an emergency by using a secondary data center located in a geographically diverse location to open, trade, and close Exchange-listed securities. Accordingly, the Commission believes that the proposal is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and the Commission therefore finds that the proposed rule change is consistent with the requirements of the Act.

### IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> that the proposed rule change (SR-NYSE-2016-48), as modified by Amendments No. 1 and Partial Amendment No. 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**Brent J. Fields,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78915; File No. SR-CBOE-2016-067]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Correct Rule 3.6A

September 23, 2016.

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 September 9, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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

The Exchange seeks to correct a typographical error in Rule 3.6A.08 related to the Qualification and Registration of Trading Permit Holders and Associated Persons. The text of the proposed rule change is provided below.

(additions are *underlined*; deletions are [bracketed])

\* \* \* \* \*

Chicago Board Options Exchange,  
Incorporated Rules

\* \* \* \* \*

Rule 3.6A. Qualification and Registration of Trading Permit Holders and Associated Persons

(a)-(e) No change.

. . . *Interpretations and Policies:*

.01-.07 No change.

.08 (a) An individual Trading Permit Holder or individual associated person who: (1) is engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer is required to register and qualify as a Securities Trader (TD) in WebCRD;

(2) (i) supervises or monitors proprietary trading, market-making and/or brokerage activities for broker-dealers; (ii) supervises or trains those engaged in proprietary trading, market-making and/or effecting transactions on behalf of a broker-dealer, with respect to those activities; and/or (iii) is an officer, partner or director of a Trading Permit Holder or TPH organization is required to register and qualify as a Securities Trader Principal (TP) in WebCRD and satisfy the prerequisite registration and qualification requirements; and

(3) is a Chief Compliance Officer (or performs similar functions) for a Trading Permit Holder or TPH organization that engages in proprietary trading, market-making or effecting transactions on behalf of a broker-dealer is required to register and qualify as a Securities Trader Compliance Officer (CT) in WebCRD and satisfy the prerequisite registration and qualification requirements.

(b) The following sets forth the qualification requirements for each of the required registration categories described in paragraph (a) to Interpretation and Policy .08:

deemed necessary or appropriate for the maintenance of a fair and orderly market, or the protection of investors or otherwise in the public interest, due to extraordinary circumstances.

<sup>24</sup> In approving these proposed rule changes, the Commission has considered the proposed rules'

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> See Proposed Exchange Rule 49(b)(N).

<sup>27</sup> 15 U.S.C. 78s(b)(2).

<sup>28</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> 15 U.S.C. 78s(b)(3)(A)(iii).

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

Category of registration	Qualification examination(s)	Alternative acceptable qualifications
Securities Trader (TD) ..... Securities Trader Principal (TP) ** .....	Series 57. Series 24 .....	General Securities Sales Supervisor Registration and General Securities Principal—Sales Supervisor Module Registration (Series 9/10 and Series 23) *
Securities Trader Compliance Officer (CT) ...	Series 14 .....	General Securities Principal Registration (GP) or Securities Trader Principal (TP) (Series 24)

\* Because the Series 23 is not available in WebCRD, each applicant must provide documentation of a valid Series 23 license to the Registration Services Department upon request for the Series 24 registration in WebCRD.

\*\* Securities Trader Principals' (TP) supervisory authority is limited to supervision of the securities trading functions of TPHs, as described in paragraph (a)(2)(i) of Interpretation and Policy .08 to Rule 3.6A, and supervision of officers, partners, and directors of a TPH or TPH organization.

.09 No change.

\* \* \* \* \*

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 correct an inadvertent typographical error in Rule 3.6A.08. The Exchange proposes to make the change so the text properly reflects the intention and practice of Rule 3.6A.08. The typographical error is explained below.

On October 9, 2015, the Exchange filed a rule change to replace the Proprietary Trader (PT) registration category and qualification examination (Series 56) with the Securities Trader (TD) registration category and qualification examination (Series 57). As part of that filing, an inadvertent typographical error was made in the sentence that begins with the two asterisks (\*\*) in Interpretation and Policy .08(b). That sentence incorrectly refers to paragraph (a)(2)(i) in Interpretation and Policy .08. The

intention was to reference paragraph (a)(2) in its entirety, not just paragraph (a)(2)(i), as the purpose of the reference is to describe the various types of supervisory authority an individual may have that requires the individual to register and qualify as a Securities Trader Principal (TP). The Exchange is now proposing to amend this error to accurately describe the intention and practice of the rule.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>5</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>6</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>7</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change is consistent with these provisions because it will more accurately describe the intention and practice of the Exchange with respect to registration requirements of Trading Permit Holders. The Exchange believes that having accurate and clear rules is in the best interests of investors and the

general public. The proposed rule change is correcting an inadvertent typographical error.

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

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is attempting to correct a typographical error and does not impact the Exchange's existing operations or rules related to registration requirements. The proposed rule change has no impact on competition.

*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 written 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:

- A. Significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and

C. 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>8</sup> and Rule 19b-4(f)(6)<sup>9</sup> thereunder. 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

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>7</sup> *Id.*

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 240.19b-4(f)(6).

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-CBOE-2016-067 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-CBOE-2016-067. 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, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2016-067 and should be submitted on or before October 20, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Brent J. Fields,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78918; File No. SR-NASDAQ-2016-104]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of a Proposed Rule Change To Amend Nasdaq Rule 5735 To Adopt Generic Listing Standards for Managed Fund Shares

September 23, 2016.

#### I. Introduction

On August 16, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Nasdaq Rule 5735 to, among other things, adopt generic listing standards for Managed Fund Shares. The proposed rule change was published for comment in the **Federal Register** on August 24, 2016.<sup>3</sup> The Commission has received no comments on the proposed rule change. This order grants approval of the proposed rule change.

#### II. Description of the Proposal

Nasdaq Rule 5735 governs the listing and trading of Managed Fund Shares on the Exchange. Managed Fund Shares are issued by actively managed exchange-traded funds ("ETFs") that do not seek to replicate the performance of a specified index of securities.

Under its current rules, the Exchange must file separate proposals under Section 19(b) of the Act before listing a new series of Managed Fund Shares.<sup>4</sup> The Exchange proposes to adopt "generic" listing standards so that the Exchange may list Managed Fund Shares that satisfy the applicable criteria by submitting notice pursuant to Rule 19b-4(e) under the Act, rather than by

filing a proposed rule change under Section 19(b) of the Act.<sup>5</sup>

#### A. Description of the Generic Listing Standards

The Exchange's listing standards establish requirements for the various types of assets that may be held in the portfolio of a generically listed, actively managed ETF ("Portfolio").

##### 1. Equity Portfolio Components

Nasdaq Rule 5735(b)(1)(A) establishes the criteria applicable to the equity securities included in a Portfolio. Equity securities include the following securities: U.S. Component Stocks, which are defined in Nasdaq Rule 5705; Non-U.S. Component Stocks, which are defined in Nasdaq Rule 5705; Exchange Traded Derivative Securities, which are defined in Nasdaq Rule 5735(c)(6);<sup>6</sup> Linked Securities, which are defined in Nasdaq Rule 5710, and each of the equivalent security types listed on another national securities exchange. Additionally, Nasdaq Rule 5735(b)(1)(A) provides that no more than 25% of the equity weight of the Portfolio can include leveraged or inverse-leveraged Exchange Traded Derivative Securities or Linked Securities and that, to the extent a Portfolio includes convertible securities, the equity securities into which such securities are converted must meet the criteria of Nasdaq Rule 5735(b)(1)(A) after converting.

Nasdaq Rule 5735(b)(1)(A)(i) would require that U.S. Component Stocks (except as mentioned below) meet the following criteria initially and on a continuing basis:

(1) Component stocks (excluding Exchange Traded Derivative Securities and Linked Securities) that in the aggregate account for at least 90% of the equity weight of the Portfolio (excluding Exchange Traded Derivative Securities and Linked Securities) each shall have a minimum market value of at least \$75 million;

<sup>5</sup> See 17 CFR 240.19b-4(e). Rule 19b-4(e) permits self-regulatory organizations ("SROs") to list and trade new derivative securities products that comply with existing SRO trading rules, procedures, surveillance programs, and listing standards, without submitting a proposed rule change under Section 19(b). See Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998).

<sup>6</sup> Nasdaq Rule 5735(c)(6) defines "Exchange Traded Derivative Securities" as: "the securities described in Nasdaq Rules 5705(a) (Portfolio Depository Receipts); 5705(b) (Index Fund Shares); 5720 (Trust Issued Receipts); 5711(d) (Commodity-Based Trust Shares); 5711(e) (Currency Trust Shares); 5711(f) (Commodity Index Trust Shares); 5711(g) (Commodity Futures Trust Shares); 5711(h) (Partnership Units); 5711(i) (Trust Units); 5735 (Managed Fund Shares); and 5711(j) (Managed Trust Securities)."

<sup>10</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> See Securities Exchange Act Release No. 78616 (Aug. 18, 2016), 81 FR 57968 ("Notice").

<sup>4</sup> See Nasdaq Rule 5735(b)(1).