Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 61

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 013
Amendment No. (req. for Amendments *) 2

Filing by Cboe BZX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *	Amendment *	Withdrawal	Section 19(b)(2) *	Section 19(b)(3)(A) *	Section 19(b)(3)(B) *
☐	☑	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action *	Date Expires *
☐	☐	

Rule

☐ 19b-4(f)(1)	☐ 19b-4(f)(4)
☐ 19b-4(f)(2)	☐ 19b-4(f)(5)
☐ 19b-4(f)(3)	☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *	Section 806(e)(2) *
☐	☐

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) * ☐

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name *	Sarah	Last Name *	Tadtman
Title *	Senior Counsel		
E-mail *	stadtman@cboe.com		
Telephone *	(913) 815-7203	Fax	

Signature

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BZX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 06/07/2023

By Kyle Murray
(Name *)

(Title *) VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Kyle Murray Date: 2023.06.07 12:27:42 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information *

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23-013 19b-4 (Clawback Policy).docx

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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23-013 Exhibit 1 (Clawback Policy).do

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

☐ Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

☐ Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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23-013 Exhibit 4 (Clawback Policy).do

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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23-013 Exhibit 5 (Clawback Policy).do

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

Item 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Exchange Act" or the "Act"),[1] and Rule 19b-4 thereunder,[2] Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as modified by Amendment No. 2 to adopt listing rules to require Companies listed on the Exchange to develop, implement, and disclose a written compensation recovery policy to comply with Rule 10D-1 under the Exchange Act and make other related changes. This Amendment No. 2 replaces SR-CboeBZX-2023 as originally filed and as amended by Amendment No. 1 and supersedes such filings in their entirety.[3]

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on February 24, 2023.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, (913) 815-7203, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 Infra note 4.

Item 3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

This Amendment No. 2 to SR-CboeBZX-2023-013 amends and replaces in its entirety the proposal as originally submitted on February 24, 2023, and as modified by Amendment No. 1 submitted March 3, 2023.[4]

Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[5] added 15 U.S.C. 78j-4 ("Section 10D") to the Exchange Act. Title 15 Section 78j-4 (a) of the U.S. Code ("Section 10D(a)") required the Commission to direct the national securities exchanges, including the Exchange, and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with the requirements of 15 U.S.C. 78j-4(b) ("Section 10D(b)") relating to a Company's[6] policy to recover Incentive-based Compensation to executive officers that was erroneously awarded on the basis of materially misreported financial information that requires an accounting restatement. To effect this requirement, the Commission has adopted Rule 10D-1 under the Exchange Act, which was published in

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4 See Securities Exchange Act Release No. 97099 (March 9, 2023), 88 FR 16051 (March 15, 2023) (SR-CboeBZX-2023-013). See also Securities Exchange Act Release No. 97364 (April 24, 2023), 88 FR 26369 (April 28, 2023) (extending the Commission's period to take action to June 13, 2023). Amendment No. 2 modifies the proposed rule text to conform to Rule 10D-1 under the Exchange Act, adds clarity and additional details to the proposal, and revises the text of proposed Exchange Rule 14.10(k) to provide for an effective date of October 2, 2023.

5 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

6 "Company" means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter XIV, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership. See Exchange Rule 14.1 (a)(3).

the Federal Register on November 28, 2022. Rule 10D-1 requires each national securities exchange and national securities association to propose rule amendments that comply with Rule 10D-1 to the Commission, no later than February 27, 2023, which must be effective no later than November 28, 2023.[7]

Rule 10D-1 directs the listing exchanges to establish listing standards that require Companies to:

- Adopt and comply with written policies for recovery of Incentive-based Compensation based on financial information required to be reported under the securities laws, applicable to the Company's executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and
- Disclose those compensation recovery policies in accordance with Commission rules, including providing the information in tagged data format.

Accordingly, in order to carry out the requirements of Rule 10D-1 the Exchange proposes to make several amendments to Exchange Rules 14.1, 14.10, and 14.12.

(1) Definitions

First, the Exchange proposes to adopt several definitions that are applicable to either the entirety of Chapter 14 or exclusively to Rule 14.10(k) that are consistent with defined terms provided in Rule 10D-1(d). Specifically, the Exchange proposes to adopt the term "Financial Reporting Measures" under Rule 14.1(a), which would mean measures that are determined and presented in accordance with the accounting principles

7 See 17 CFR 240.10D-1(a)(2).

used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission. The Exchange also proposes to adopt the term "Incentive-based Compensation" under Rule 14.1(a), which would mean any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. Based on these proposed definitions, the Exchange also proposes to modify the numbering of the definitions provided under Rule 14.1(a). Further, in order to clarify that these definitions are also applicable to proposed Rule 14.10(k), the Exchange proposes to provide in proposed Interpretation and Policy .21 to Rule 14.10 that the terms Financial Reporting Measures and Incentive-based Compensation will have the definitions set forth in Rule 14.1(a).

The Exchange proposes to adopt new a definition of "Executive Officer" applicable only to Rule 14.10(k). The term Executive Officer is already defined under Rule 14.1(a); therefore, the Exchange proposes to adopt a separate definition under proposed Interpretation and Policy .21 of Rule 14.10. As proposed, the term Executive Officer would mean, for purposes of the compensation recovery policy, a Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's parent(s) or subsidiaries are deemed Executive Officers of the Company if

they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an Executive Officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b). The Exchange also proposes to define under new interpretation and policy .21 of Rule 14.10 the term "received". Specifically, Incentive-based Compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the Incentive-based Compensation award is attained, even if the payment or grant of the Incentive-based Compensation occurs after the end of that period.

As noted above, the definition of Financial Reporting Measures, Incentive-based Compensation, Executive Officer, and the application of "received" as it relates to Incentive-based Compensation is substantively identical to the definitions provided Rule 10-D-1(d).

(2) Compensation Recovery Policy

Next, the Exchange proposes to adopt a new corporate governance requirement under Rule 14.10 related to the compensation recovery policy. Accordingly, the Exchange proposes to modify Rule 14.10(a) to include the compensation recovery policy in the list of rules covered under Rule 14.10. The Exchange proposes to adopt the compensation recovery policy requirement under proposed Rule 14.10(k). Proposed Rule

14.10(k) first provides a summary of the timing requirements for compliance under the proposed Rule in accordance with Rule 10D-1. Specifically, the Rule would state that in accordance with Rule 10D-1 under the Act, each Company shall: (i) adopt the compensation recovery policy required by this Rule no later than 60 days following October 2, 2023 (the "effective date"); (ii) comply with that recovery policy for all Incentive-based Compensation received by Executive Officers on or after the effective date; and (iii) provide the disclosures required by this Rule and in the applicable Commission filings required on or after the effective date.

Proposed Rule 14.10(k) would take effect on October 2, 2023 (i.e., the effective date). The Exchange believes that it is consistent with the Section 10D of the Act to delay effectiveness of Section 303A.14 until this date because it believes that doing so is consistent with the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuers that the proposed rules would take effect a year after the adoption of SEC Rule 10D-1, based on the issuers' understanding of a statement made by the SEC staff in the Rule 10D-1 Adopting Release.[8]

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[8] See Release Nos. 33–11126; 34–96159; IC– 34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022) ("Rule 10D-1 Adopting Release"). Specifically, the Rule 10D-1 Adopting Release included the following statement (87 FR at 73111):

> While we acknowledge commenter concerns about the need for adequate time to prepare for the application of the listing standards and the development of appropriate recovery policies, including in some cases the renegotiation of certain contracts, we believe the final rules provide ample time for such preparations. In that regard, we note that issuers will have more than a year from the date the final rules are published in the Federal Register to prepare and adopt compliant recovery policies. We believe the prescriptive nature of Rule 10D-1 provides issuers with sufficient notice to begin such preparations concurrently with listing standards being finalized.

Proposed Rule 14.10(k) would then set forth the requirements related to the compensation recovery policy. First, proposed Rule 14.10(k)(1) requires that each Company adopt and comply with a written compensation recovery policy providing that the Company will recover reasonably promptly the amount of erroneously awarded Incentive-based Compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, as required by Section 10D-1 under the Act.

Proposed Rule 14.10(k)(1)(A) sets forth the circumstances under which the Company's Incentive-based Compensation recovery policy must apply. Specifically, the Company's recovery policy must apply to a person (i) after beginning service as an Executive Officer; (ii) who served as an Executive Officer at any time during the performance period for that Incentive-based Compensation; (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (iv) during the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in proposed paragraph (k)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous

fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

Proposed Rule 14.10(k)(1)(B) provides that for purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule is the earlier to occur of: (i) the date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule; or (ii) the date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (k)(1) of this Rule.

Proposed Rule 14.10(k)(1)(C) provides that the amount of Incentive-based Compensation that must be subject to the Company's compensation recovery policy ("erroneously awarded compensation") is the amount of Incentive-based Compensation received that exceeds the amount of Incentive-based Compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For Incentive-based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, proposed Rule 14.10(k)(1)(C)(i)-(ii) sets forth additional requirements. Specifically, the amount must be based on a reasonable estimate of the

effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was received, and the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the exchange or association.

Proposed Rule 14.10(k)(1)(D) provides that the Company must recover erroneously awarded compensation in compliance with its compensation recovery policy except to the extent that the below three conditions are met and the Company's committee of Independent Directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable. The three conditions are as follows:

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the exchange or association.
- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the applicable

national securities exchange or association, that recovery would result in such a violation, and must provide such opinion to the exchange or association.

- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

Finally, under proposed Rule 14.10(k)(1)(E) a Company's written compensation recovery policy must provide that the Company is prohibited from indemnifying any Executive Officer or former Executive Officer against the loss of erroneously awarded compensation.

The second requirement under proposed Rule 14.10(k)(2) provides that each Company must file all disclosures with respect to the recovery policy in accordance with the requirements of Federal securities laws, including the disclosure required by the applicable Commission filings.

(3) Exemptions to Compensation Recovery Policy Requirement

The Exchange also proposes to amend Rule 14.10(e) (exemptions the Corporate Governance Requirements) to provide for limited exemptions to the compensation recovery policy requirement in accordance with Rule 10D-1. First, the Exchange proposes to exempt asset-backed issuers and other passive issuers from the compensation recovery policy requirement. Specifically, proposed Rule 14.10(e)(1)(A)(iii) exempts any security issued by a unit investment trust ("UIT"), as defined in 15 U.S.C 80a-4(2), from the compensation recovery policy requirements under proposed Rule 14.10(k). As discussed

in the Final Rule,[9] unlike listed funds, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Commission exempted the listing of any security issued by a UIT from the requirements of Rule 10D-1 under the Exchange Act. As such, the Exchange proposes to similarly exempt such UITs from the requirements of Rule 14.10(k).

Second, proposed Rule 14.10(e)(1)(E)(iv) exempts any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded Incentive-based Compensation to any Executive Officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company. Excluding listed funds that do not pay Incentive-based Compensation would allow such funds to avoid the burden of developing recovery policies they may never use. Listed funds that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers.

(4) Failure to Meet Listing Standard

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9 See Securities Exchange Act No. 11126 (October 26, 2022) 87 FR 73076 (November 28, 2022) (Listing Standards for Recovery of Erroneously Awarded Compensation) (the "Final Rule").

Last, the Exchange proposes to amend Rule 14.12 (Failure to Meet Listing Standards) to provide for a Company's failure to meet the requirements of proposed Rule 14.10(k). Amended Rule 14.12(f)(2)(A)(iii) would provide when a Company is deficient with respect to Rule 14.10(k), it may submit a plan to regain compliance to the Listing Qualifications Department. In this regard, the Exchange proposes to allow Companies 45 calendar days to submit such a plan, which is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[10] If Exchange staff does not accept the plan, a Staff Delisting Determination will be issued, which could be appealed to a Hearings Panel pursuant to Rule 14.12(h). The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Exchange staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Exchange staff would be required to issue a delisting letter,[11] which the issuer could appeal to the Hearings Panel, as provided in Exchange Rule 14.12(h). The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

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10 The Exchange notes that the following deficiencies are allowed 45 calendar days to submit a plan to regain compliance: deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), or 14.10(j) (Voting Rights).

11 Rule 14.12 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, the Exchange believes that issuance of a Public Reprimand Letter is inconsistent with the provisions of Rule 10D-1 and, therefore, proposes to amend its applicable listing rules to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D-1.

Exchange Rule 14.12 currently provides that violations of Exchange corporate governance or notification listing standards may result in a Public Reprimand Letter if the Staff of Adjudicatory Body determines that delisting is an inappropriate sanction, with one exception. Specifically, the Exchange will not issue a Public Reprimand Letter if the violation involved the violation of a corporate governance or notification listing standard required by Rule 10A-3 under the Act. The Exchange proposes to similarly prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required by Rule 10D-1. Accordingly, the Exchange proposes to amend Rule 14.12(b)(9), (f)(4), (h)(3)(iii), (i)(4)(A), and (j)(4). Additionally, the Exchange proposes to modify the aforementioned Rules to provide that Rules 10A-3 and 10D-1 are "under" the Act.

While Rule 10D-1 requires a listed Company recover the amount of erroneously awarded Incentive-based Compensation reasonably promptly, it does not specify the time by which the Company must complete the recovery of excess Incentive-based Compensation. The Exchange would determine whether the steps a Company is taking constitute compliance with its compensation recovery policy. The Company's obligation to recover erroneously awarded Incentive-based Compensation reasonably promptly will be assessed on a holistic basis with respect to each accounting restatement prepared by the Company. In evaluating whether a Company is recovering erroneously awarded Incentive-based Compensation reasonably promptly, the Exchange will consider whether the Company is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery and whether the Company is securing recovery

through means that are appropriate based on the particular facts and circumstances of each Executive Officer that owes a recoverable amount.

(b) 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.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[13] 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. Section 6(b)(5) also requires that a national securities exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange is proposing to adopt Rule 14.10(k) to comply with the requirements of Section 954 of the Dodd-Frank Act and Rule 10D-1 under the Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest. The Exchange also believes that the proposal will contribute to investor protection and the public interest by incentivizing executive officers to take steps to reduce the likelihood of inadvertent

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12 15 U.S.C. 78f(b).

13 15 U.S.C. 78f(b)(5).

misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Exchange expects will further discourage such behavior. These increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors.

Proposed Rule 14.10(k) would take effect on October 2, 2023 (i.e., the effective date). The Exchange believes that it is consistent with the Section 10D of the Act to delay effectiveness of Section 303A.14 until this date because it believes that doing so is consistent with the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuers that the proposed rules would take effect a year after the adoption of SEC Rule 10D-1, based on the issuers' understanding of a statement made by the SEC staff in the Rule 10D-1 Adopting Release.[14]

The Exchange believes it is not unfairly discriminatory to exempt UITs and management investment companies that do not pay Incentive-based Compensation from the requirements of proposed Rule 14.10(k). Specifically, excluding management investment companies that do not pay Incentive-based Compensation would allow such companies to avoid the burden of developing recovery policies they may never use. Management investment companies that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers. Further, unlike management investment companies, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition,

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14 Supra note 8.

because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Exchange believes that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt the listing of any security issued by a UIT from the requirements of proposed Rule 14.10(k).

The Exchange believes that allowing a Company to regain compliance with Rule 14.10(k) by submitting a plan of compliance to the Listing Qualifications within 45 calendar days is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[15] Therefore, the Exchange believes the proposal to permit a Company to submit such a plan for a deficiency related to Rule 14.10(k) provides continuity in the Exchange's rulebook, to the benefit of investors.

Finally, the Exchange believes the proposal to prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required Rule 14.10(k) is consistent with the requirements of Rule 10D-1, which provide that a Company would be subject to delisting if it does not adopt and comply with its compensation recovery policy. The Exchange notes that existing Exchange Rules similarly prohibit violations of a corporate governance or notification listing standard that is required by 10A-3 from issuing a Public Reprimand Letter.

Item 4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rules are designed to allow investors to properly assess the value of the Companies whose financial reporting

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15 Supra note 6.

is based on erroneous information. Without such a rule, such erroneous information could result in an inefficient allocation of capital, inhibiting capital formation and competition. The Exchange does not believe the proposal will have any impact on intramarket competition as all listing exchanges are required to adopt similar listing standards pursuant to Rule 10D-1.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action on the proposed rule change specified in Section 19(b)(2) of the Act.[16]

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

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16 15 U.S.C. 78s(b)(2).

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 2-Exhibit 3. Not applicable.

Exhibit 4. Marked copy of changes to the rule text proposed in this amendment compared against the version of the rule text that was initially filed.

Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBZX-2023-013]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Adopt Listing Rules to Require Companies Listed on the Exchange to Develop, Implement, and Disclose a Written Compensation Recovery Policy to Comply with Rule 10D-1 Under the Exchange Act and Make Other Related Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as modified by Amendment No. 2 to adopt listing rules to require Companies listed on the Exchange to develop, implement, and disclose a written compensation recovery policy to comply with Rule 10D-1 under the Exchange Act and make other related changes. The text of the proposed rule change is provided in Exhibit 5.

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1 15 U.S.C. 78s(b)(1).

2 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/), 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

This Amendment No. 2 to SR-CboeBZX-2023-013 amends and replaces in its entirety the proposal as originally submitted on February 24, 2023, and as modified by Amendment No. 1 submitted March 3, 2023.[3]

Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act")[4] added 15 U.S.C. 78j-4 ("Section 10D") to the Exchange Act. Title 15 Section 78j-4 (a) of the U.S. Code ("Section 10D(a)") required the

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3 See Securities Exchange Act Release No. 97099 (March 9, 2023), 88 FR 16051 (March 15, 2023) (SR-CboeBZX-2023-013). See also Securities Exchange Act Release No. 97364 (April 24, 2023), 88 FR 26369 (April 28, 2023) (extending the Commission's period to take action to June 13, 2023). Amendment No. 2 modifies the proposed rule text to conform to Rule 10D-1 under the Exchange Act, adds clarity and additional details to the proposal, and revises the text of proposed Exchange Rule 14.10(k) to provide for an effective date of October 2, 2023.

4 Pub. L. No. 111-203, 124 Stat. 1376 (2010).

Commission to direct the national securities exchanges, including the Exchange, and national securities associations to prohibit the listing of any equity security of an issuer that is not in compliance with the requirements of 15 U.S.C. 78j-4(b) ("Section 10D(b)") relating to a Company's[5] policy to recover Incentive-based Compensation to executive officers that was erroneously awarded on the basis of materially misreported financial information that requires an accounting restatement. To effect this requirement, the Commission has adopted Rule 10D-1 under the Exchange Act, which was published in the Federal Register on November 28, 2022. Rule 10D-1 requires each national securities exchange and national securities association to propose rule amendments that comply with Rule 10D-1 to the Commission, no later than February 27, 2023, which must be effective no later than November 28, 2023.[6]

Rule 10D-1 directs the listing exchanges to establish listing standards that require Companies to:

- Adopt and comply with written policies for recovery of Incentive-based Compensation based on financial information required to be reported under the securities laws, applicable to the Company's executive officers, during the three completed fiscal years immediately preceding the date that the issuer is required to prepare an accounting restatement; and

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5 "Company" means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter XIV, the term "Company" includes an issuer that is not incorporated, such as, for example, a limited partnership. See Exchange Rule 14.1 (a)(3).

6 See 17 CFR 240.10D-1(a)(2).

- Disclose those compensation recovery policies in accordance with Commission rules, including providing the information in tagged data format.

Accordingly, in order to carry out the requirements of Rule 10D-1 the Exchange proposes to make several amendments to Exchange Rules 14.1, 14.10, and 14.12.

(1) Definitions

First, the Exchange proposes to adopt several definitions that are applicable to either the entirety of Chapter 14 or exclusively to Rule 14.10(k) that are consistent with defined terms provided in Rule 10D-1(d). Specifically, the Exchange proposes to adopt the term "Financial Reporting Measures" under Rule 14.1(a), which would mean measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission. The Exchange also proposes to adopt the term "Incentive-based Compensation" under Rule 14.1(a), which would mean any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure. Based on these proposed definitions, the Exchange also proposes to modify the numbering of the definitions provided under Rule 14.1(a). Further, in order to clarify that these definitions are also applicable to proposed Rule 14.10(k), the Exchange proposes to provide in proposed Interpretation and Policy .21 to Rule 14.10 that the terms Financial Reporting Measures and Incentive-based Compensation will have the definitions set forth in Rule 14.1(a).

The Exchange proposes to adopt new a definition of "Executive Officer" applicable only to Rule 14.10(k). The term Executive Officer is already defined under Rule 14.1(a); therefore, the Exchange proposes to adopt a separate definition under proposed Interpretation and Policy .21 of Rule 14.10. As proposed, the term Executive Officer would mean, for purposes of the compensation recovery policy, a Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's parent(s) or subsidiaries are deemed Executive Officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an Executive Officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b). The Exchange also proposes to define under new interpretation and policy .21 of Rule 14.10 the term "received". Specifically, Incentive-based Compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the

Incentive-based Compensation award is attained, even if the payment or grant of the Incentive-based Compensation occurs after the end of that period.

As noted above, the definition of Financial Reporting Measures, Incentive-based Compensation, Executive Officer, and the application of "received" as it relates to Incentive-based Compensation is substantively identical to the definitions provided Rule 10-D-1(d).

(2) Compensation Recovery Policy

Next, the Exchange proposes to adopt a new corporate governance requirement under Rule 14.10 related to the compensation recovery policy. Accordingly, the Exchange proposes to modify Rule 14.10(a) to include the compensation recovery policy in the list of rules covered under Rule 14.10. The Exchange proposes to adopt the compensation recovery policy requirement under proposed Rule 14.10(k). Proposed Rule 14.10(k) first provides a summary of the timing requirements for compliance under the proposed Rule in accordance with Rule 10D-1. Specifically, the Rule would state that in accordance with Rule 10D-1 under the Act, each Company shall: (i) adopt the compensation recovery policy required by this Rule no later than 60 days following October 2, 2023 (the "effective date"); (ii) comply with that recovery policy for all Incentive-based Compensation received by Executive Officers on or after the effective date; and (iii) provide the disclosures required by this Rule and in the applicable Commission filings required on or after the effective date.

Proposed Rule 14.10(k) would take effect on October 2, 2023 (i.e., the effective date). The Exchange believes that it is consistent with the Section 10D of the Act to delay effectiveness of Section 303A.14 until this date because it believes that doing so is

consistent with the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuers that the proposed rules would take effect a year after the adoption of SEC Rule 10D-1, based on the issuers' understanding of a statement made by the SEC staff in the Rule 10D-1 Adopting Release.[7]

Proposed Rule 14.10(k) would then set forth the requirements related to the compensation recovery policy. First, proposed Rule 14.10(k)(1) requires that each Company adopt and comply with a written compensation recovery policy providing that the Company will recover reasonably promptly the amount of erroneously awarded Incentive-based Compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, as required by Section 10D-1 under the Act.

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7 See Release Nos. 33–11126; 34–96159; IC– 34732; File No. S7–12–15; 87 FR 73076 (November 28, 2022) ("Rule 10D-1 Adopting Release"). Specifically, the Rule 10D-1 Adopting Release included the following statement (87 FR at 73111):

> While we acknowledge commenter concerns about the need for adequate time to prepare for the application of the listing standards and the development of appropriate recovery policies, including in some cases the renegotiation of certain contracts, we believe the final rules provide ample time for such preparations. In that regard, we note that issuers will have more than a year from the date the final rules are published in the Federal Register to prepare and adopt compliant recovery policies. We believe the prescriptive nature of Rule 10D-1 provides issuers with sufficient notice to begin such preparations concurrently with listing standards being finalized.

Proposed Rule 14.10(k)(1)(A) sets forth the circumstances under which the Company's Incentive-based Compensation recovery policy must apply. Specifically, the Company's recovery policy must apply to a person (i) after beginning service as an Executive Officer; (ii) who served as an Executive Officer at any time during the performance period for that Incentive-based Compensation; (iii) while the Company has a class of securities listed on a national securities exchange or a national securities association; and (iv) during the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in proposed paragraph (k)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

Proposed Rule 14.10(k)(1)(B) provides that for purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule is the earlier to occur of: (i) the date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule; or (ii)

the date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (k)(1) of this Rule.

Proposed Rule 14.10(k)(1)(C) provides that the amount of Incentive-based Compensation that must be subject to the Company's compensation recovery policy ("erroneously awarded compensation") is the amount of Incentive-based Compensation received that exceeds the amount of Incentive-based Compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For Incentive-based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement, proposed Rule 14.10(k)(1)(C)(i)-(ii) sets forth additional requirements. Specifically, the amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was received, and the Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the exchange or association.

Proposed Rule 14.10(k)(1)(D) provides that the Company must recover erroneously awarded compensation in compliance with its compensation recovery policy except to the extent that the below three conditions are met and the Company's committee of Independent Directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable. The three conditions are as follows:

- The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation, document such reasonable attempt(s) to recover, and provide that documentation to the exchange or association.
- Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the applicable national securities exchange or association, that recovery would result in such a violation, and must provide such opinion to the exchange or association.
- Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

Finally, under proposed Rule 14.10(k)(1)(E) a Company's written compensation recovery policy must provide that the Company is prohibited from indemnifying any Executive Officer or former Executive Officer against the loss of erroneously awarded compensation.

The second requirement under proposed Rule 14.10(k)(2) provides that each Company must file all disclosures with respect to the recovery policy in accordance with the requirements of Federal securities laws, including the disclosure required by the applicable Commission filings.

(3) Exemptions to Compensation Recovery Policy Requirement

The Exchange also proposes to amend Rule 14.10(e) (exemptions the Corporate Governance Requirements) to provide for limited exemptions to the compensation recovery policy requirement in accordance with Rule 10D-1. First, the Exchange proposes to exempt asset-backed issuers and other passive issuers from the compensation recovery policy requirement. Specifically, proposed Rule 14.10(e)(1)(A)(iii) exempts any security issued by a unit investment trust ("UIT"), as defined in 15 U.S.C 80a-4(2), from the compensation recovery policy requirements under proposed Rule 14.10(k). As discussed in the Final Rule,[8] unlike listed funds, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Commission exempted the listing of any security issued by a UIT from the requirements of Rule 10D-1 under the Exchange Act. As such, the Exchange proposes to similarly exempt such UITs from the requirements of Rule 14.10(k).

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8 See Securities Exchange Act No. 11126 (October 26, 2022) 87 FR 73076 (November 28, 2022) (Listing Standards for Recovery of Erroneously Awarded Compensation) (the "Final Rule").

Second, proposed Rule 14.10(e)(1)(E)(iv) exempts any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded Incentive-based Compensation to any Executive Officer of the company in any of the last three fiscal years, or in the case of a company that has been listed for less than three fiscal years, since the listing of the company. Excluding listed funds that do not pay Incentive-based Compensation would allow such funds to avoid the burden of developing recovery policies they may never use. Listed funds that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers.

(4) Failure to Meet Listing Standard

Last, the Exchange proposes to amend Rule 14.12 (Failure to Meet Listing Standards) to provide for a Company's failure to meet the requirements of proposed Rule 14.10(k). Amended Rule 14.12(f)(2)(A)(iii) would provide when a Company is deficient with respect to Rule 14.10(k), it may submit a plan to regain compliance to the Listing Qualifications Department. In this regard, the Exchange proposes to allow Companies 45 calendar days to submit such a plan, which is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[9] If Exchange

[9] The Exchange notes that the following deficiencies are allowed 45 calendar days to submit a plan to regain compliance: deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), or 14.10(j) (Voting Rights).

staff does not accept the plan, a Staff Delisting Determination will be issued, which could be appealed to a Hearings Panel pursuant to Rule 14.12(h). The administrative process for such deficiencies will follow the established pattern used for similar corporate governance deficiencies, and would allow Exchange staff to provide the issuer up to 180 days to cure the deficiency. Thereafter, Exchange staff would be required to issue a delisting letter,[10] which the issuer could appeal to the Hearings Panel, as provided in Exchange Rule 14.12(h). The Hearings Panel could allow the issuer up to an additional 180 days to cure the deficiency.

Exchange Rule 14.12 currently provides that violations of Exchange corporate governance or notification listing standards may result in a Public Reprimand Letter if the Staff of Adjudicatory Body determines that delisting is an inappropriate sanction, with one exception. Specifically, the Exchange will not issue a Public Reprimand Letter if the violation involved the violation of a corporate governance or notification listing standard required by Rule 10A-3 under the Act. The Exchange proposes to similarly prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required by Rule 10D-1. Accordingly, the Exchange proposes to amend Rule 14.12(b)(9), (f)(4), (h)(3)(iii), (i)(4)(A), and (j)(4). Additionally, the Exchange proposes to modify the aforementioned Rules to provide that Rules 10A-3 and 10D-1 are "under" the Act.

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[10] Rule 14.12 provides that notifications of deficiencies that allow for submission of a compliance plan may result, after review of the compliance plan, in issuance of a Staff Delisting Determination or a Public Reprimand Letter. However, the Exchange believes that issuance of a Public Reprimand Letter is inconsistent with the provisions of Rule 10D-1 and, therefore, proposes to amend its applicable listing rules to provide that a Public Reprimand Letter may not be issued for violations of a listing standard required by Rule 10D-1.

While Rule 10D-1 requires a listed Company recover the amount of erroneously awarded Incentive-based Compensation reasonably promptly, it does not specify the time by which the Company must complete the recovery of excess Incentive-based Compensation. The Exchange would determine whether the steps a Company is taking constitute compliance with its compensation recovery policy. The Company's obligation to recover erroneously awarded Incentive-based Compensation reasonably promptly will be assessed on a holistic basis with respect to each accounting restatement prepared by the Company. In evaluating whether a Company is recovering erroneously awarded Incentive-based Compensation reasonably promptly, the Exchange will consider whether the Company is pursuing an appropriate balance of cost and speed in determining the appropriate means to seek recovery and whether the Company is securing recovery through means that are appropriate based on the particular facts and circumstances of each Executive Officer that owes a recoverable amount.

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.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to,

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11 15 U.S.C. 78f(b).

12 15 U.S.C. 78f(b)(5).

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. Section 6(b)(5) also requires that a national securities exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange is proposing to adopt Rule 14.10(k) to comply with the requirements of Section 954 of the Dodd-Frank Act and Rule 10D-1 under the Act, and therefore believes the proposed rule change to be consistent with the Act, particularly with respect to the protection of investors and the public interest. The Exchange also believes that the proposal will contribute to investor protection and the public interest by incentivizing executive officers to take steps to reduce the likelihood of inadvertent misreporting and will reduce the financial benefits to executive officers who choose to pursue impermissible accounting methods, which the Exchange expects will further discourage such behavior. These increased incentives may improve the overall quality and reliability of financial reporting, which further benefits investors.

Proposed Rule 14.10(k) would take effect on October 2, 2023 (i.e., the effective date). The Exchange believes that it is consistent with the Section 10D of the Act to delay effectiveness of Section 303A.14 until this date because it believes that doing so is consistent with the goal of implementing the proposed rule promptly while also being consistent with the expectations of listed issuers that the proposed rules would take effect a year after the adoption of SEC Rule 10D-1, based on the issuers' understanding of a statement made by the SEC staff in the Rule 10D-1 Adopting Release.[13]

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13 Supra note 7.

The Exchange believes it is not unfairly discriminatory to exempt UITs and management investment companies that do not pay Incentive-based Compensation from the requirements of proposed Rule 14.10(k). Specifically, excluding management investment companies that do not pay Incentive-based Compensation would allow such companies to avoid the burden of developing recovery policies they may never use. Management investment companies that have paid Incentive-based Compensation in that time period, however, would be subject to the rule and rule amendments and be required to implement a compensation recovery policy like other listed issuers. Further, unlike management investment companies, UITs are pooled investment entities without a board of directors, corporate officers, or an investment adviser to render investment advice during the life of the UIT, and they do not file a certified shareholder report. In addition, because the investment portfolio of a UIT is generally fixed, UITs are not actively managed. Accordingly, the Exchange believes that it is necessary or appropriate in the public interest, and consistent with the protection of investors, to exempt the listing of any security issued by a UIT from the requirements of proposed Rule 14.10(k).

The Exchange believes that allowing a Company to regain compliance with Rule 14.10(k) by submitting a plan of compliance to the Listing Qualifications within 45 calendar days is consistent with the deficiencies from most other rules that allow Companies to submit a plan to regain compliance.[14] Therefore, the Exchange believes the proposal to permit a Company to submit such a plan for a deficiency related to Rule 14.10(k) provides continuity in the Exchange's rulebook, to the benefit of investors.

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14 Supra note 5.

Finally, the Exchange believes the proposal to prohibit the issuance of a Public Reprimand Letter for violations of a corporate governance or notification listing standard that is required Rule 14.10(k) is consistent with the requirements of Rule 10D-1, which provide that a Company would be subject to delisting if it does not adopt and comply with its compensation recovery policy. The Exchange notes that existing Exchange Rules similarly prohibit violations of a corporate governance or notification listing standard that is required by 10A-3 from issuing a Public Reprimand Letter.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rules are designed to allow investors to properly assess the value of the Companies whose financial reporting is based on erroneous information. Without such a rule, such erroneous information could result in an inefficient allocation of capital, inhibiting capital formation and competition. The Exchange does not believe the proposal will have any impact on intramarket competition as all listing exchanges are required to adopt similar listing standards pursuant to Rule 10D-1.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds

such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2023-013 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-CboeBZX-2023-013. 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; 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-CboeBZX-2023-013 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.[15]

Secretary

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15 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Additions set forth in the proposed rule text of original SR-CboeBZX-2023-013 are underlined; deletions are [bracketed]. Additional changes being made pursuant to Amendment No. 2 to SR-CboeBZX-2023-013 are double-underlined; deletions being made pursuant to Amendment No. 2 to CboeBZX-2023-013 are struck-through.

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Rules of Cboe BZX Exchange, Inc.

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Rule 14.1. The Qualification, Listing, and Delisting of Companies – Definitions

(a) Definitions

The following is a list of definitions used throughout the Exchange's Listing Rules. Other definitions used throughout the Exchange's Listing Rules are set forth in Rule 1.5. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1)-(13) No change.

(14) "Financial Reporting Measures" means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

(15) "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.

(16) "Incentive-based Compensation" means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

([15]17)"Independent Director" is defined in Rule 14.10(c)(1)(B).

([16]18) "Index Warrants" is defined in Rule 14.11(g)(1).

([17]19) "Listed Securities" means securities listed on the Exchange or another national securities exchange

([18]20) "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations into the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

([19]21) "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares).

([20]22) "Other Regulatory Authority" means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.

([21]23) "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts ("ADRs") or Shares ("ADSs").

([22]24) "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

([23]25) "Public Holders" means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

([24]26) "Round Lot" or "Normal Unit of Trading" means 100 shares of a security unless, with respect to a particular security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Exchange symbol.

([25]27) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

([26]28) "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of Chapter XIV, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

([27]29) "Substantial Shareholder" is defined in Rule 14.10(i)(5)(C).

([28]30) "Substitution Listing Event" means: a reverse stock split, reincorporation or a change in the Company's place of organization, the formation of a holding company

that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

([29]31) "Tier I" is a distinct tier of the Exchange comprised of securities that satisfies the applicable requirements of Rules 14.3 through 14.7, meets the criteria set forth in Rule 14.8 or, in the case of certain other types of securities, the criteria set forth in Rule 14.11, and are listed as Tier I securities.

([30]32) "Tier I security" means any security listed on the Exchange that (1) satisfies all applicable requirements of Rules 14.3 through 14.7 and meets the criteria set forth in Rule 14.8; (2) is a right to purchase such security; (3) is a warrant to subscribe to such security; (4) is an Index Warrant which meets the criteria set forth in Rule 14.11(g); or (5) is another type of security that meets the criteria of another paragraph of Rule 14.11.

([31]33) "Tier II" is a distinct tier of the Exchange comprised of securities that satisfies the applicable requirements of Rules 14.3 through 14.7, meets the criteria set forth in Rule 14.9, and are listed as Tier II securities.

([32]34) "Tier II security" means any security listed on the Exchange as a Tier II security that (1) satisfies all applicable requirements of Rules 14.3 through 14.7 and Rule 14.9 but that is not a Tier I security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

([33]35) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

* * * * *

Rule 14.10. Corporate Governance Requirements

(a) In addition to meeting applicable quantitative requirements in Rules 14.3 through 14.9, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; [and]shareholder approval, including voting rights; and compensation recovery policy. Exemptions to these rules, including phase-in schedules, are set forth in paragraph (e) below.

The Exchange maintains a website that provides guidance on the applicability of the corporate governance requirements by FAQs and published summaries of anonymous versions of previously issued staff interpretative letters. Companies are encouraged to contact Listing Qualifications to discuss any complex issues or transactions. Companies can also submit a request for a written interpretation pursuant to paragraph (b) below.

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(e) Exemptions from Certain Corporate Governance Requirements

This Rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy, Companies transferring from other markets, and Companies listed on the Exchange prior to July 1, 2013. This Rule also describes the applicability of the corporate governance rules to Controlled Companies and sets forth the phase-in schedule afforded to Companies ceasing to be Controlled Companies.

(1) Exemptions to the Corporate Governance Requirements

(A) Asset-backed Issuers and Other Passive Issuers. The following are exempt from the requirements relating to:

(i) No change.

(ii) No change.

(iii) Compensation Recovery Policy (Rule 14.10(k)): any security issued by a unit investment trust, as defined in 15 U.S.C 80a-4(2), is exempt from the compensation recovery policy requirements under Rule 14.10(k).

(B)-(D) No change.

(E) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 14.10, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the following:

(i)-(iii) No change.

(iv) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded Incentive-based Compensation to any Executive Officer of the Company in any of the last three fiscal years, or in the case of a Company that has been listed for less than three fiscal years, since the listing of the Company, is exempt from the compensation recovery policy requirements under Rule 14.10(k).

(F) No change.

(2)-(3) No change.

* * * * *

(k) *Compensation Recovery Policy.*

In accordance with Rule 10D-1 under the Act, each Company must: (i) adopt the compensation recovery policy required by this Rule no later than 60 days following ~~the {insert date of Commission approval of File No. SR-CboeBZX-2023-013}~~October 2, 2023 (the "effective date"); ~~to which the Company is subject~~; (ii) comply with that recovery policy for all Incentive-based Compensation received (as such term is defined in Interpretation and Policy .21 to Rule 14.10) by Executive Officers on or after the effective date ~~of the applicable listing standard~~; and (iii) provide the disclosures required by this Rule and in the applicable Commission filings required on or after the effective date ~~of the listing standard to which the Company is subject~~.

(1) Each Company must adopt and comply with a written recovery policy providing that the Company will recover reasonably promptly the amount of erroneously awarded Incentive-based Compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, as required by Section 10D-1 under the Act. Specifically:

(A) The Company's recovery policy must apply to all Incentive-based Compensation received by a person:

(i) After beginning service as an Executive Officer;

(ii) Who served as an Executive Officer at any time during the performance period for that Incentive-based Compensation;

(iii) While the Company has a class of securities listed on a national securities exchange or national securities association; and

(iv) During the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

(B) For purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule is the earlier to occur of:

(i) The date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule; or

(ii) The date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (k)(1) of this Rule.

(C) The amount of Incentive-based Compensation that must be subject to the Company's recovery policy ("erroneously awarded compensation") is the amount of Incentive-based Compensation received that exceeds the amount of Incentive-based Compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For Incentive-based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

(i) The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was received; and

(ii) The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

(D~~iii~~) The Company must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions of paragraphs (k)(1)(~~C~~D)(~~iii~~)(~~a~~), (~~b~~ii), or (~~c~~iii) of this Rule 14.10 are met, and the Company's committee of Independent Directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

(~~a~~i) The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation,

document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.

(~~b~~ii) Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.

(~~c~~iii) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

(~~D~~E) The Company is prohibited from indemnifying any Executive Officer or former Executive Officer against the loss of erroneously awarded compensation.

(2) Each Company must file all disclosures with respect to the recovery policy in accordance with the requirements of Federal securities laws, including the disclosure required by the applicable Commission filings.

* * * * *

Interpretations and Policies

.01-.20 No change.

.21 Definitions Applicable to Rule 14.10(k) (Compensation Recovery Policy)

The following definitions apply for the purposes of Rule 14.10(k):

~~For purposes of the compensation recovery policy an~~ "Executive Officer" is a Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's parent(s) or subsidiaries are deemed Executive Officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an

Executive Officer for purposes of this Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

"Received". Incentive-based Compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the Incentive-based Compensation award is attained, even if the payment or grant of the Incentive-based Compensation occurs after the end of that period.

The terms "Financial Reporting Measures" and "Incentive-based Compensation" will have the definitions set forth in Rule 14.1(a).

* * * * *

Rule 14.12. Failure to Meet Listings Standards

(a) No change.

(b) Definitions

(1)-(8) No change.

(9) "Public Reprimand Letter" means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(10)-(11) No change.

(c)-(e) No change.

(f) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review.

(A) Submission of Plan of Compliance. Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (v) below. In accordance with Rule 14.12(f)(2)(C), plans provided pursuant to subsections (i) through (iii) and (v) below must be provided generally within 45 calendar days, and in accordance with Rule 14.12(f)(2)(F), plans provided pursuant to subsection (iv) must be provided generally within 60 calendar days.

(i)-(ii) No change.

(iii) or deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), [or]14.10(j) (Voting Rights), or 14.10(k) (Compensation Recovery Policy);

(iv)-(v) No change.

(B)-(F) No change.

(3) No change.

(4) Public Reprimand Letter. Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(g) No change.

(h) Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(1)-(2) No change.

(3) Scope of the Hearings Panel's Discretion

(A) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(i)-(ii) No change.

(iii) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(iv)-(v) No change.

(B)-(D) No change

(4) No change.

(i) Appeal to the Exchange Listing Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This paragraph (i) describes the procedures applicable to appeals and calls for review.

(1)-(3) No change.

(4) Scope of Listing Council's Discretion

(A) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the

Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(B)-(E) No change.

(5) No change.

(j) Discretionary Review by the Exchange Board

(1)-(3) No change.

(4) Board Decision

If the Exchange Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 14.12(m)(3). The Exchange Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Exchange Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Exchange Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Exchange Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Exchange Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Exchange Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Exchange Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 14.12(k) and submit an application on Form 25 to the Commission to strike the security from listing.

(k)-(m) No change.

* * * * *

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BZX Exchange, Inc.

* * * * *

Rule 14.1. The Qualification, Listing, and Delisting of Companies – Definitions

(a) Definitions

The following is a list of definitions used throughout the Exchange's Listing Rules. Other definitions used throughout the Exchange's Listing Rules are set forth in Rule 1.5. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1)-(13) No change.

(14) "Financial Reporting Measures" means measures that are determined and presented in accordance with the accounting principles used in preparing the Company's financial statements, and any measures that are derived wholly or in part from such measures. Stock price and total shareholder return are also financial reporting measures. A financial reporting measure need not be presented within the financial statements or included in a filing with the Commission.

(15) "Foreign Private Issuer" shall have the same meaning as under Rule 3b-4 under the Act.

(16) "Incentive-based Compensation" means any compensation that is granted, earned, or vested based wholly or in part upon the attainment of a financial reporting measure.

([15]17)"Independent Director" is defined in Rule 14.10(c)(1)(B).

([16]18) "Index Warrants" is defined in Rule 14.11(g)(1).

([17]19) "Listed Securities" means securities listed on the Exchange or another national securities exchange

([18]20) "Market Maker" means a dealer that, with respect to a security, holds itself out (by entering quotations into the Exchange) as being willing to buy and sell such security for its own account on a regular and continuous basis and that is registered as such.

([19]21) "Market Value" means the consolidated closing bid price multiplied by the measure to be valued (e.g., a Company's Market Value of Publicly Held Shares is equal to the consolidated closing bid price multiplied by a Company's Publicly Held Shares).

([20]22) "Other Regulatory Authority" means: (i) in the case of a bank or savings authority identified in Section 12(i) of the Act, the agency vested with authority to enforce the provisions of Section 12 of the Act; or (ii) in the case of an insurance company that is subject to an exemption issued by the Commission that permits the listing of the security, notwithstanding its failure to be registered pursuant to section 12(b), the Commissioner of Insurance (or other officer or agency performing a similar function) of its domiciliary state.

([21]23) "Primary Equity Security" means a Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts ("ADRs") or Shares ("ADSs").

([22]24) "Publicly Held Shares" means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating publicly held shares shall be made in accordance with Rule 13d-3 under the Act.

([23]25) "Public Holders" means holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

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([25]27) "Round Lot Holder" means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

([26]28) "Shareholder" means a record or beneficial owner of a security listed or applying to list. For purposes of Chapter XIV, the term "Shareholder" includes, for example, a limited partner, the owner of a depository receipt, or unit.

([27]29) "Substantial Shareholder" is defined in Rule 14.10(i)(5)(C).

([28]30) "Substitution Listing Event" means: a reverse stock split, reincorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares

for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

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([31]33) "Tier II" is a distinct tier of the Exchange comprised of securities that satisfies the applicable requirements of Rules 14.3 through 14.7, meets the criteria set forth in Rule 14.9, and are listed as Tier II securities.

([32]34) "Tier II security" means any security listed on the Exchange as a Tier II security that (1) satisfies all applicable requirements of Rules 14.3 through 14.7 and Rule 14.9 but that is not a Tier I security; (2) is a right to purchase such security; or (3) is a warrant to subscribe to such security.

([33]35) "Total Holders" means holders of a security that includes both beneficial holders and holders of record.

* * * * *

Rule 14.10. Corporate Governance Requirements

(a) In addition to meeting applicable quantitative requirements in Rules 14.3 through 14.9, Companies applying to list and listed on the Exchange must meet the qualitative requirements outlined in this Rule. These requirements include rules relating to a Company's board of directors, including audit committees and Independent Director oversight of executive compensation and the director nomination process; code of conduct; shareholder meetings, including proxy solicitation and quorum; review of related party transactions; [and]shareholder approval, including voting rights; and compensation recovery policy. Exemptions to these rules, including phase-in schedules, are set forth in paragraph (e) below.

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(1) Exemptions to the Corporate Governance Requirements

(A) Asset-backed Issuers and Other Passive Issuers. The following are exempt from the requirements relating to:

(i) No change.

(ii) No change.

(iii) Compensation Recovery Policy (Rule 14.10(k)): any security issued by a unit investment trust, as defined in 15 U.S.C 80a-4(2), is exempt from the compensation recovery policy requirements under Rule 14.10(k).

(B)-(D) No change.

(E) Management Investment Companies. Management investment companies (including business development companies) are subject to all the requirements of Rule 14.10, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the following:

(i)-(iii) No change.

(iv) Any security issued by a management company, as defined in 15 U.S.C. 80a-4(3), that is registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8), if such management company has not awarded Incentive-based Compensation to any Executive Officer of the Company in any of the last three fiscal years, or in the case of a Company that has been listed for less than three fiscal years, since the listing of the Company, is exempt from the compensation recovery policy requirements under Rule 14.10(k).

(F) No change.

(2)-(3) No change.

* * * * *

(k) *Compensation Recovery Policy.*

In accordance with Rule 10D-1 under the Act, each Company must: (i) adopt the compensation recovery policy required by this Rule no later than 60 days following October 2, 2023 (the "effective date"); (ii) comply with that recovery policy for all Incentive-based Compensation received (as such term is defined in Interpretation and Policy .21 to Rule 14.10) by Executive Officers on or after the effective date; and (iii) provide the disclosures required by this Rule and in the applicable Commission filings required on or after the effective date.

(1) Each Company must adopt and comply with a written recovery policy providing that the Company will recover reasonably promptly the amount of erroneously awarded Incentive-based Compensation in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period, as required by Section 10D-1 under the Act. Specifically:

(A) The Company's recovery policy must apply to all Incentive-based Compensation received by a person:

(i) After beginning service as an Executive Officer;

(ii) Who served as an Executive Officer at any time during the performance period for that Incentive-based Compensation;

(iii) While the Company has a class of securities listed on a national securities exchange or national securities association; and

(iv) During the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule. In addition to these last three completed fiscal years, the recovery policy must apply to any transition period (that results from a change in the Company's fiscal year) within or immediately following those three completed fiscal years. However, a transition period between the last day of the Company's previous fiscal year end and the first day of its new fiscal year that comprises a period of nine to 12 months would be deemed a completed fiscal year. A Company's obligation to recover erroneously awarded compensation is not dependent on if or when the restated financial statements are filed.

(B) For purposes of determining the relevant recovery period, the date that a Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule is the earlier to occur of:

(i) The date the Company's board of directors, a committee of the board of directors, or the officer or officers of the Company authorized to take such action if board action is not required, concludes, or reasonably should have concluded, that the Company is required to prepare an accounting restatement as described in paragraph (k)(1) of this Rule; or

(ii) The date a court, regulator, or other legally authorized body directs the Company to prepare an accounting restatement as described in paragraph (k)(1) of this Rule.

(C) The amount of Incentive-based Compensation that must be subject to the Company's recovery policy ("erroneously awarded compensation") is the amount of Incentive-based Compensation received that exceeds the amount of Incentive-based Compensation that otherwise would have been received had it been determined based on the restated amounts, and must be computed without regard to any taxes paid. For Incentive-based Compensation based on stock price or total shareholder return, where the amount of erroneously awarded compensation is not subject to mathematical recalculation directly from the information in an accounting restatement:

(i) The amount must be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-based Compensation was received; and

(ii) The Company must maintain documentation of the determination of that reasonable estimate and provide such documentation to the Exchange.

(D) The Company must recover erroneously awarded compensation in compliance with its recovery policy except to the extent that the conditions of paragraphs (k)(1)(D)(i), (ii), or (iii) of this Rule 14.10 are met, and the Company's committee of Independent Directors responsible for executive compensation decisions, or in the absence of such a committee, a majority of the independent directors serving on the board, has made a determination that recovery would be impracticable.

(i) The direct expense paid to a third party to assist in enforcing the policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on expense of enforcement, the Company must make a reasonable attempt to recover such erroneously awarded compensation,

document such reasonable attempt(s) to recover, and provide that documentation to the Exchange.

(ii) Recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of erroneously awarded compensation based on violation of home country law, the Company must obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation, and must provide such opinion to the Exchange.

(iii) Recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the registrant, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

(E) The Company is prohibited from indemnifying any Executive Officer or former Executive Officer against the loss of erroneously awarded compensation.

(2) Each Company must file all disclosures with respect to the recovery policy in accordance with the requirements of Federal securities laws, including the disclosure required by the applicable Commission filings.

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Interpretations and Policies

.01-.20 No change.

.21 Definitions Applicable to Rule 14.10(k) (Compensation Recovery Policy)

The following definitions apply for the purposes of Rule 14.10(k):

"Executive Officer" is a Company's president, principal financial officer, principal accounting officer (or if there is no such accounting officer, the controller), any vice-president of the Company in charge of a principal business unit, division, or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's parent(s) or subsidiaries are deemed Executive Officers of the Company if they perform such policy making functions for the Company. In addition, when the Company is a limited partnership, officers or employees of the general partner(s) who perform policy-making functions for the limited partnership are deemed officers of the limited partnership. When the Company is a trust, officers, or employees of the trustee(s) who perform policy-making functions for the trust are deemed officers of the trust. Policy-making function is not intended to include policy-making functions that are not significant. Identification of an Executive Officer for purposes of this

Rule would include at a minimum executive officers identified pursuant to 17 CFR 229.401(b).

"Received". Incentive-based Compensation is deemed received in the Company's fiscal period during which the financial reporting measure specified in the Incentive-based Compensation award is attained, even if the payment or grant of the Incentive-based Compensation occurs after the end of that period.

The terms "Financial Reporting Measures" and "Incentive-based Compensation" will have the definitions set forth in Rule 14.1(a).

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Rule 14.12. Failure to Meet Listings Standards

(a) No change.

(b) Definitions

(1)-(8) No change.

(9) "Public Reprimand Letter" means a letter issued by Staff or a Decision of an Adjudicatory Body in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and Staff or the Adjudicatory Body determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, Staff or the Adjudicatory Body will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(10)-(11) No change.

(c)-(e) No change.

(f) Types of Deficiencies and Notifications

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

(1) No change.

(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review.

(A) Submission of Plan of Compliance. Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (v) below. In accordance with Rule 14.12(f)(2)(C), plans provided pursuant to subsections (i) through (iii) and (v) below must be provided generally within 45 calendar days, and in accordance with Rule 14.12(f)(2)(F), plans provided pursuant to subsection (iv) must be provided generally within 60 calendar days.

(i)-(ii) No change.

(iii) or deficiencies from the standards of Rules 14.10(f)(3) (Quorum), 14.10(h) (Review of Related Party Transactions), 14.10(i) (Shareholder Approval), 14.6(c)(3) (Auditor Registration), 14.7 (Direct Registration Program), 14.10(d) (Code of Conduct), 14.10(e)(1)(D)(v) (Quorum of Limited Partnerships), 14.10(e)(1)(D)(vii) (Related Party Transactions of Limited Partnerships), [or]14.10(j) (Voting Rights), or 14.10(k) (Compensation Recovery Policy);

(iv)-(v) No change.

(B)-(F) No change.

(3) No change.

(4) Public Reprimand Letter. Staff's notification may be in the form of a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and Staff determines that delisting is an inappropriate sanction. In determining whether to issue a public reprimand letter, the Listing Qualifications Department will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(g) No change.

(h) Review of Staff Determinations by Hearings Panel

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(1)-(2) No change.

(3) Scope of the Hearings Panel's Discretion

(A) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(i)-(ii) No change.

(iii) issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Hearings Panel determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Hearings Panel will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations;

(iv)-(v) No change.

(B)-(D) No change

(4) No change.

(i) Appeal to the Exchange Listing Council

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This paragraph (i) describes the procedures applicable to appeals and calls for review.

(1)-(3) No change.

(4) Scope of Listing Council's Discretion

(A) The Listing Council may, where it deems appropriate, affirm, modify, or reverse the Panel Decision, or remand the matter to the Listing Qualifications Department or to the Hearings Panel for further consideration. The Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff Delisting Determination with respect to the deficiency for which the exception is granted. The Listing Council also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Listing Council determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Listing Council will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the

Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations.

(B)-(E) No change.

(5) No change.

(j) Discretionary Review by the Exchange Board

(1)-(3) No change.

(4) Board Decision

If the Exchange Board conducts a discretionary review, the Company will be provided a written Decision that meets the requirements of Rule 14.12(m)(3). The Exchange Board may affirm, modify or reverse the Panel or Listing Council Decision and may remand the matter to the Listing Council, Hearings Panel, or staff of the Listing Qualifications Department with appropriate instructions. The Exchange Board also may issue a Decision that serves as a Public Reprimand Letter in cases where the Company has violated an Exchange corporate governance or notification listing standard (other than one required by Rule 10A-3 or 10D-1 under[of] the Act) and the Exchange Board determines that delisting is an inappropriate sanction. In determining whether to issue a Public Reprimand Letter, the Exchange Board will consider whether the violation was inadvertent, whether the violation materially adversely affected shareholders' interests, whether the violation has been cured, whether the Company reasonably relied on an independent advisor and whether the Company has demonstrated a pattern of violations. The Decision of the Exchange Board will take immediate effect, unless it specifies to the contrary, and represents the final action of the Exchange. If the Exchange Board determines to delist the Company, the securities of the Company will be immediately suspended, unless the Exchange Board specifies to the contrary, and the Exchange will follow the procedures contained in Rule 14.12(k) and submit an application on Form 25 to the Commission to strike the security from listing.

(k)-(m) No change.

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