

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83908; File No. SR-CboeBZX-2018-064)

August 22, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Certain Representations Relating to the Listing and Trading of Shares of the Innovator S&P 500 Buffer ETFs

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 August 16, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend certain representations made in a proposed rule change previously filed with the Commission pursuant to Rule 19b-4 relating to the Innovator S&P 500 Buffer ETFs (the “Buffer Funds”).

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 parts of such statements.

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

1. Purpose

The shares of the Buffer Funds (the “Shares”) were approved to be listed and traded on the Exchange under Rule 14.11(i),³ which governs the listing and trading of Managed Fund Shares, but have not yet begun trading. The Buffer Funds are each a series of the Innovator ETFs Trust (the “Trust”), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.⁴

In this proposed rule change, the Exchange proposes to amend several representations made in the Prior Approval related to the investment strategy, as described below.⁵

Throughout the description of the Buffer Funds’ investment strategy in the Prior Approval, there are representations such as “(each Buffer Fund will) seek to provide investment returns during the outcome period that match the gains of the S&P 500 Index up to the Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 10%.” The Exchange is

³ See Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR-BatsBZX-2017-72) (the “Prior Approval”).

⁴ See Registration Statement on Form N-1A for the Trust, dated August 8, 2018 (File Nos. 333-146827 and 811-22135) (the “Registration Statement”). The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C 80a-1) (“1940 Act”) (the “Exemptive Order”). See Investment Company Act Release No. 32854 (October 6, 2017) (File No. 812-14781).

⁵ The Exchange notes that while a change was made to the principal investment strategy, there were no changes to the Buffer Funds’ investment objective, the method or methods used to select the Buffer Funds’ portfolio investments, or the Buffer Funds’ fees and expenses.

proposing to amend all such representations related to the Buffer Funds such that the Buffer Funds will provide investment returns during the outcome period that match the gains of the S&P 500 Index up to the Buffer Cap Level, while shielding investors from S&P 500 Index losses of up to 9% instead of the previously stated 10%.

The Exchange does not believe that this proposed change raises any substantive issues for the Commission because it represents only a small change to the investment strategy and all other statements and representations made in the Prior Approval regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference assets and intraday indicative values, and the applicability of Exchange listing rules specified in the Prior Approval remain true and shall continue to constitute continued listing requirements for the Buffer Funds. Additionally, the change proposed above will constitute a continued listing requirement for the Buffer Funds.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act⁶ in general and Section 6(b)(5) of the Act⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

As described above, all of the representations from the Prior Approval which formed the basis for the Prior Approval remain true and will continue to constitute continued listing requirements for the Buffer Funds with the exception of the one point (changing the downside protection from 10% to 9%) that the Exchange is proposing to amend. This proposed change will not make any changes to the types of instruments that the Buffer Funds can hold, but will only make a small change to the investment strategy. As such, the Exchange believes that the proposal does not raise any substantive issues that were not previously addressed in the Prior Approval.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange believes that the proposal to allow the Buffer Funds to amend their investment strategy will enhance competition among both market participants and listing venues by allowing additional series of Managed Fund Shares to come to list on the Exchange, to the benefit of investors and the marketplace.

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

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

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission

may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁰ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹¹ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the 30-day operative delay would allow the Buffer Funds to immediately begin listing and trading on the Exchange and employ its amended investment strategy. The Commission does not believe that any new or novel issues are raised by the proposal. Moreover, as noted above, apart from modifying the downside protection from 10% to 9%, all other statements and representations made in the Prior Approval would remain true and will apply on a continuous basis. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹²

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2018-064 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-2018-064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications

relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-064, 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.¹³

Eduardo A. Aleman
Assistant Secretary

¹³ 17 CFR 200.30-3(a)(12).