

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89011; File No. SR-CboeBZX-2020-049)

June 4, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Exempt Tracking Fund Shares Listed Pursuant to Rule 14.11(m) from Certain Governance Requirements

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 3, Cboe BZX Exchange, Inc. (“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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes a rule change to provide an exemption to certain governance requirements for series of Tracking Fund Shares listed on the Exchange pursuant to Rule 14.11(m).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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

On May 15, 2020, the Commission approved an Exchange proposal to adopt BZX Rule 14.11(m) related to the listing and trading of Tracking Fund Shares⁵ on the Exchange.⁶ Currently, Rule 14.10(e)(1)(E) provides an exemption to certain audit committee requirements provided under Rule 14.10(c)(3) for funds listed on the Exchange that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares. Specifically, Rule

⁵ The term “Tracking Fund Share” means a security that: (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

⁶ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (the “Approval Order”). While the Approval Order approved the listing and trading of several series of Tracking Fund Shares, the Exchange notes that those series have not yet listed on the Exchange.

14.10(e)(1)(E) provides that “management investment companies that are Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares, as defined in Rules 14.11(c), 14.11(i), 14.11(k), and 14.11(l), respectively, are exempt from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A-3.”⁷

Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares are exempted from the requirements of Rule 14.10(c)(3) because they are otherwise subject to the accounting and auditing requirements of the Investment Company Act of 1940 (the “1940 Act”), including Section 32(a).⁸ Because Tracking Fund Shares are also subject to the accounting and auditing requirements under the 1940 Act and are so similarly situated to Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares, the Exchange believes that Tracking Fund Shares should be subject to and exempt from the same corporate governance requirements associated with listing on the Exchange. As such, the Exchange is proposing to make a change to amend Rule 14.10(e)(1)(E) in order to add Tracking Fund Shares to the list of product types listed on the Exchange that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A-3.⁹

⁷ The Exchange notes that it recently submitted a similar proposal to add Managed Portfolio Shares to the exemption under Rule 14.10(e)(1)(E). See Securities Exchange Act Release No. 88075 (January 29, 2020), 85 FR 6240 (February 4, 2020) (SR-CboeBZX-2020-010).

⁸ 15 U.S.C. 80a-31.

⁹ 17 CFR 240.10A-3.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act¹⁰ in general and Section 6(b)(5) of the Act¹¹ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that this change to amend Rule 14.10(e)(1)(E) in order to add Tracking Fund Shares to a list of product types listed on the Exchange, including Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares, that are exempted from the Audit Committee requirements set forth in Rule 14.10(c)(3), except for the applicable requirements of SEC Rule 10A-3 is consistent with the Act because it is meant only to subject Tracking Fund Shares to the same corporate governance requirements currently applicable to the very similar product structures of Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. To the contrary, the Exchange believes that the proposed rule change would promote both intermarket and intramarket competition by exempting Tracking Fund Shares from the audit committee

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(5).

requirements set forth in Rule 14.10(c)(3) except for the applicable requirements of SEC Rule 10A-3. This is consistent with exemptions provided to Index Fund Shares, Managed Fund Shares, Managed Portfolio Shares, and ETF Shares, which, like Tracking Fund Shares, are otherwise subject to the audit committee requirements of the 1940 Act, including Section 32(a).

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 foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁴ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁵ 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 requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The

¹² 15 U.S.C. 78s(b)(3)(A).

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

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

Exchange stated that it believes that waiving the operative delay will allow any series of Tracking Fund Shares that lists on the Exchange in the near future to take advantage of this exemption to certain audit committee requirements and not have to either delay launch or take short-term remedial measures to comply with all requirements of Rule 14.10(c)(3).

The Commission believes that waiver of the operative delay is appropriate because, as the Exchange stated, the rule proposal is requesting an exemption to certain audit committee requirements that is currently granted to Managed Fund Shares, Index Fund Shares, Managed Portfolio Shares, and ETF Shares, and there are no unique issues associated with proving such an exemption to Tracking Fund Shares that have not already been considered by the Commission or that would warrant disparate treatment. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁶

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.

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

¹⁶ 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).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-049 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-049. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-CboeBZX-2020-049 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).