

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90356; File No. SR-CboeBZX-2020-082)

November 5, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule to Eliminate the Listing Fee Waiver for Issuers of Certain ETPs

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 November 4, 2020, 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

The Exchange is proposing to amend Rule 14.13(b)(2)(C) related to the listing of exchange traded products (“ETPs”)³ on the Exchange. Specifically, the Exchange is proposing to eliminate Rule 14.13(b)(2)(C)(iii) related to Auction Fee Listings, as defined below, and to make several other corresponding amendments to Rule 14.13(b)(2)(C).

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 As defined in Rule 11.8(e)(1)(A), the term “ETP” means any security listed pursuant to Exchange Rule 14.11.

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

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

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

1. Purpose

The Exchange is proposing to amend Rule 14.13(b)(2)(C) related to the listing of exchange traded products (“ETPs”)⁴ on the Exchange. Specifically, the Exchange is proposing to eliminate Rule 14.13(b)(2)(C)(iii) related to Auction Fee Listings, as defined below, and to make several other corresponding amendments to Rule 14.13(b)(2)(C).⁵

Auction Fee Listings

Currently, Rule 14.13(b)(2)(C)(iii) provides that any issuer that has an average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer’s ETPs listed on the Exchange that exceeds 500,000 shares (an “Auction Fee Listing”), there is no annual listing fee for that issuer’s ETPs listed on the Exchange. Any ETP

⁴ As defined in Rule 11.8(e)(1)(A), the term “ETP” means any security listed pursuant to Exchange Rule 14.11.

⁵ The Exchange initially filed the proposed fee change on November 2, 2020 (SR-CboeBZX-2020-081). On November 4, 2020, the Exchange withdrew that filing and submitted this filing.

that is not an Auction Fee Listing, a Legacy Listing,⁶ a New Listing,⁷ an Outcome Strategy ETP,⁸ or a Transfer Listing⁹ is currently charged an annual listing fee based on the consolidated average daily volume (“CADV”) of the ETP in the fourth quarter of the preceding calendar year, which ranges from \$5,000 to \$7,000 annually and decreases as the CADV of an ETP increases, a model that is generally designed to reflect the additional revenue that an individual ETP listed on the Exchange creates for the Exchange as its CADV increases. The Exchange is proposing to eliminate Rule 14.13(b)(2)(C)(iii) and the concept of the Auction Fee Listing from its rules. As such, the Exchange is proposing that ETPs under Rule 14.13(b)(2)(C)(iii) that were previously not charged an annual listing fee will be charged an annual listing fee pursuant to the fees table in current Rule 14.13(b)(2)(C)(v)¹⁰ beginning on January 4, 2021, the first trading day of the applicable year.¹¹

The Exchange is also proposing to make certain corresponding changes, including deleting a reference to “Auction Fee Listing” under current Rule 14.13(b)(2)(C)(v) and changing the numbering associated with Rules 14.13(b)(2)(C)(iv) and (v) to 14.13(b)(2)(C)(iii) and (iv), respectively.

⁶ As defined in Rule 14.13(b)(2)(C)(i), a “Legacy Listing” is an ETP listed on the Exchange prior to January 1, 2019.

⁷ As defined in Rule 14.13(b)(2)(C)(ii), a “New Listing” is an ETP during its first calendar year listed on the Exchange or an ETP that has been listed for fewer than three calendar months on the ETP’s first trading day of the year.

⁸ As defined in current Rule 14.13(b)(2)(C)(iv) (Rule 14.13(b)(2)(C)(iii), as amended beginning January 4, 2021), an “Outcome Strategy ETP” is an ETP where the issuer lists multiple ETPs that are each designed to provide (i) a pre-defined set of returns; (ii) over a specified outcome period; (iii) based on the performance of the same underlying instrument; and (iv) each employ the same outcome strategy for achieving the pre-defined set of returns.

⁹ As defined in Rule 14.13(b)(2)(C)(ii) [sic], a “Transfer Listing” is an ETP that transfers its listing from another national securities exchange to the Exchange.

¹⁰ Rule 14.13(b)(2)(C)(iv), as amended beginning January 4, 2021.

¹¹ The Exchange notes that if ETPs are Legacy Listings, New Listings, Outcome Strategy ETPs, and Transfer Listings, then they will be subject to those applicable annual fees as described in current Rule 14.13(b)(2)(C)(i), (ii) and (iv).

Implementation Date

As noted above, the Exchange intends to implement these amendments to its fee schedule on January 4, 2021, the first trading day of the upcoming year for which an ETP will be billed for applicable annual listing fees pursuant to Rule 14.13(b)(2)(C).¹² The Exchange will announce to its Members the implementation of the rule change prior to its January 4, 2021 implementation date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹³ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹⁴ in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed deletion of Rule 14.13(b)(2)(C)(iii) to eliminate the Auction Fee Listing is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would apply equally for all issuers and all ETPs. The pricing for Auction Fee Listings was originally designed to help the Exchange attract and retain listings from issuers of ETPs that had a collectively large auction volume. As the Exchange has continued to grow its ETP listing business, it has determined that such an incentive

¹² The Exchange notes that although this proposal may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act and paragraph (f)(2) of Rule 19b-4 thereunder, the Exchange may choose for such change to be effective on a date other than the filing date.

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

program is no longer necessary and that such ETPs should instead be subject to the standard annual listing fees on the Exchange, which are generally based on the CADV of the ETP, pursuant to current Rule 14.13(b)(2)(C)(v).¹⁵ Such a change will create a fee structure that will generally apply on a product by product basis instead of across all of an issuer's ETP listings on the Exchange, which will allow the Exchange to charge issuers in a manner more directly related to the incremental costs associated with the initial and continued listing of ETPs on the Exchange.

The Exchange believes that this is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because such standard fees are generally designed to reflect the additional revenue that an individual ETP listed on the Exchange creates for the Exchange through executions occurring in the auctions and additional shares executed on the Exchange. Listing exchanges generally receive an outsized portion of intraday trading activity and receive all auction volume for ETPs listed on the exchange. The higher the CADV for an ETP, the greater the likely income the Exchange will receive based on outsized intraday trading activity and auction volume for such ETP. This structure is designed to reward the issuer of an ETP for such additional revenue brought to the Exchange as CADV increases, which the Exchange believes creates a more equitable and appropriate fee structure for issuers based on the revenue and expenses associated with listing ETPs on the Exchange. With this in mind, the Exchange believes that that it is reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to charge lower fees for ETPs with a higher CADV.

¹⁵ See supra notes 10 and 11.

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 not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposed elimination of Auction Fee Listings for ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as it is intended to increase the revenue of the Exchange's listing program in order to better compete. Further, the standard fees that will apply on a going forward basis are directly related to the amount of revenue that the Exchange receives from ETPs listed on the Exchange. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for listings that better reflects the revenue and expenses associated with listing ETPs on the Exchange.

The Exchange does not believe the proposed amendments would burden intramarket competition as they would be available to all issuers uniformly.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and paragraph (f) of Rule 19b-4 thereunder.¹⁷ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-082 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-2020-082. 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-2020-082 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).