

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90957; File No. SR-CboeBZX-2021-012)

January 21, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Expand the Annual Listing Fee Cap for Outcome Strategy ETPs to Include Series Having Returns Based on Two or More Reference Indexes

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 January 13, 2021, 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 the Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13.

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

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 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”)³ on the Exchange. Specifically, the Exchange is proposing to modify the fee definition of Outcome Strategy ETPs provided under Rule 14.13(b)(2)(C)(iii) (the “Rule”) to include ETPs that provide returns based on the performance of more than one underlying instruments.

By way of background, Outcome Strategy ETPs are ETPs that are designed to provide a particular set of returns over a specified outcome period based on the performance of an underlying instrument during the ETP’s outcome period. As an example, an Outcome Strategy ETP would include an ETP that employs the following strategy (the “Buffer Strategy”): the ETP seeks to provide investment returns that match the gains of a particular index (the “Reference Index”) up to a maximized annual return (the “Cap Level”) while guarding against certain declines in that same underlying index (the “Buffer Level”) over a particular period of time (the “Outcome Period”). If over the course of the Outcome Period, the Reference Index increases in value, the ETP would appreciate by approximately the same amount, up to the Cap Level. If over the course of the Outcome Period, the Reference Index decreases in value by an amount equal to or less than the Buffer Level, then the ETP would provide an approximate total return of zero. If

³ As defined in Rule 11.8(e)(1)(A), the term “ETP” means any security listed pursuant to Exchange Rule 14.11.

over the course of the Outcome Period, the Reference Index decreases in value by an amount greater than the Buffer Level, then the ETP would decrease in value by approximately the same percentage as the Reference Index, minus the Buffer Level. Such outcomes would only apply for the specified Outcome Period and the ETP would reset at the end of that Outcome Period in order to employ the same Buffer Strategy for the following Outcome Period.⁴

As such, the Outcome Period applicable to each ETP is particularly important and investors need to have more granular Outcome Periods in order to ensure that they are able to achieve the full Cap Level upside and Buffer Level downside protection. Issuers of Outcome Strategy ETPs generally issue the products in at least quarterly versions of each strategy. The issuer may also elect to list ETPs employing the Buffer Strategy in order to provide monthly Outcome Periods, meaning that there would be twelve separate ETPs listed on the Exchange that each employ the same Buffer Strategy, but have different Outcome Periods. Again, this provides investors with more precision when deciding which Outcome Strategy ETP to purchase among the series of Outcome Strategy ETPs (the “Outcome Strategy Series”).

With this in mind, the Exchange adopted the Rule which capped the maximum listing fee per year for an Outcome Strategy Series at \$16,000. Specifically, the Rule provides that where an 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 predefined set of

⁴ The Exchange notes that the Cap Levels, Buffer Levels, and the duration of each Outcome Period will vary across Outcome Strategy Series, but that the concepts of providing exposure to a particular reference instrument with an upside cap and limited downside over a particular period of time generally define Outcome Strategy ETPs.

returns, the maximum annual listing fee applicable to such Outcome Strategy Series will be \$16,000 per year.

Now, the Exchange proposes to expand criteria (iii) of the Rule to include ETPs that are based on the performance of two or more underlying instruments. Such an amendment would expand the annual listing fee cap to include an Outcome Strategy Series that may, for example, include Outcome Strategy ETPs with returns based on the performance of two or more Reference Indexes. The Exchange intends to implement the proposed amendments to its fee schedule on January 4, 2021.

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.⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁶ 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 amendment to the Rule is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges because it would apply equally for all issuers and all Outcome Strategy Series. The Rule was designed to implement a cap on the listing fees for multiple series of Outcome Strategy ETPs with, among other things, returns based on the same underlying instrument. However, the Rule does not contemplate such a cap for a series of Outcome Strategy ETPs with returns based on the

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

performance of multiple instruments. As such, the proposed amendment would allow a greater number of Outcome Strategy Series to benefit from the fee cap of \$16,000.

The Exchange notes that the proposal would only expand the cap on fees for ETPs meeting the amended definition of Outcome Strategy ETPs and would only act to leave static or reduce fees for ETPs listed on the Exchange. Further, as proposed, the Rule would decrease the fees associated with Outcome Strategy ETPs that are based on the performance of the same underlying instruments, which may reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Outcome Strategy ETPs, to the benefit of investors. The Exchange notes that an issuer would only receive the benefit of the annual fee cap if they accrue greater than \$16,000 in listing fees for a particular Outcome Strategy Series.

The Exchange believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is a reasonable means to incentivize issuers to list (or transfer) Outcome Strategy ETPs on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. The proposed rule changes reflect a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

Based on the foregoing, the Exchange believes that the proposed rule changes are consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The

Exchange does not believe that the proposed change burdens competition, but instead, enhances competition, as it is intended to apply the \$16,000 fee cap to Outcome Strategy ETPs that are based on the performance of two or more instruments, which may lead to reduced fees for issuers of such products. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. This proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change represents a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. The Exchange believes that such proposed changes will directly enhance competition among ETP listing venues by reducing the costs associated with listing on the Exchange for ETPs meeting the proposed definition of Outcome Strategy ETPs. 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 neither solicited nor received comments on the proposed rule change.

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 Act⁷ and paragraph (f) of Rule 19b-4⁸ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the 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-2021-012 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-2021-012. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b-4(f).

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 such 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-2021-012, 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.⁹

J. Matthew DeLesDernier
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(12).