

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92015; File No. SR-CboeBZX-2021-041)

May 25, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Define the Terms “Derivative Security” and “UTP Derivative Security” and Amend Certain Related Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 19, 2021, Cboe BZX Exchange, Inc. (“Exchange”) 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 Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed amendment to define the terms “Derivative Security” and “UTP Derivative Security” in Exchange Rule 1.5. Additionally, the Exchange proposes to make certain amendments to Rules 3.21 and 14.11 to both simplify and clarify the Exchange’s rules as they pertain to UTP Derivative Securities. The text of the proposed rule change is provided in Exhibit 5.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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/](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

As part of this proposal, the Exchange proposes to (1) adopt a new definition for Derivative Security under proposed Rule 1.5(dd); (2) move the definition of unlisted trading privileges ("UTP") Derivative Security<sup>5</sup> from Rule 14.11(j) to Exchange Rule 1.5(ee); and (3) amend Exchange Rule 14.11(j) applicable to UTP Derivative Securities. The Exchange also proposes to make ministerial changes to update numbering, lettering, Rule references, and provide clarifying text to Rules 1.5, 3.21, and 14.11. As discussed in further detail below, all of the proposed substantive changes are substantially similar to other exchange rules.

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<sup>5</sup> See Rule 14.11(j) and proposed amendments to Rule 1.5(ee).

(1) Proposal to Define Derivative Security in Exchange Rule 1.5(dd) and UTP Derivative Security in Exchange Rule 1.5(ee)

The Exchange proposes to define “Derivative Security” in proposed Rule 1.5(dd) and amend existing Rule 1.5(ee) to include the definition of “UTP Derivative Security”. “Derivative Security” would be a new definition and would mean a security that meets the definition of “new derivative securities product” in Rule 19b-4(e) under the Act. “UTP Derivative Security” would refer to any one of a list of Derivative Securities that trades on the Exchange pursuant to unlisted trading privileges. The list of proposed Derivative Securities that may meet the definition of UTP Derivative Security are as follows: Equity Linked Notes; Index Fund Shares listed pursuant to Exchange Rule 14.11(c) or Nasdaq Stock Market LLC (“Nasdaq”) Rule 5705(b) and Investment Company Units listed pursuant to NYSE Arca, Inc. (“NYSE Arca”) Rule 5.2- E(j)(3); Index-Linked Exchangeable Notes; Equity Gold Shares; Equity Index-Linked Securities; Commodity-Linked Securities; Currency-Linked Securities; Fixed Income Index-Linked Securities; Futures-Linked Securities; Multifactor Index-Linked Securities; Trust Certificates; Currency and Index Warrants; Portfolio Depository Receipts; Trust Issued Receipts; Commodity-Based Trust Shares; Currency Trust Shares; Commodity Index Trust Shares; Commodity Futures Trust Shares; Partnership Units; Paired Trust Shares; Trust Units; Managed Fund Shares; Managed Trust Securities; Managed Portfolio Shares; Tracking Fund Shares listed pursuant to Exchange Rule 14.11(m), Active Proxy Portfolio Shares listed pursuant to NYSE Arca Rule 8.601-E, and Proxy Portfolio Shares listed pursuant to Nasdaq Stock Market LLC Rule 5750; Selected Equity-linked Debt Securities (“SEEDS”); and Exchange-Traded Fund Shares.<sup>6</sup> The proposal is substantially similar to NYSE National, Inc. (“NYSE National”) Rule 1.1(m), but the list of Derivative Securities that may be UTP

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<sup>6</sup> For inclusiveness, all Derivative Securities that are subject to unlisted trading privileges have been identified in the list of proposed UTP Derivative Securities.

Derivative Securities includes two additional Derivative Securities, SEEDS and Exchange-Traded Fund Shares. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules.

The Exchange also proposes to re-letter existing Rules 1.5(dd) through (ee) to allow for the addition of proposed Rule 1.5(dd). Further, the Exchange proposes to amend Rule 3.21 to reference the proposed definition of UTP Derivative Securities in Rule 1.5(ee).

(2) Proposal to Amend the Exchange’s Rule Applicable to UTP Derivative Securities

First, the Exchange proposes to re-name Rule 14.11(j) to “UTP Derivative Securities” so that it is consistent with the proposed definition set forth in Rule 1.5(ee). The Exchange also proposes to amend the preamble to Rule 14.11(j) to refer to the defined term UTP Derivative Security, as proposed in Exchange Rule 1.5(ee).

The Exchange also proposes to eliminate existing Rule 14.11(j)(1), which provides that the Exchange shall file with the Commission a Form 19b-4(e) with respect to each UTP Derivative Security. The Exchange believes that it should not be necessary to file a Form 19b-4(e) with the Commission if it begins trading a UTP Derivative Security because Rule 19b-4(e) under the Act refers to the “listing and trading” of a “new derivative securities product”. The Exchange believes that the requirements of Rule 19b-4(e) refer to when an exchange lists and trades a Derivative Security, and not when an exchange seeks only to trade such product on a UTP basis pursuant to

Rule 12f-2 under the Act.<sup>7</sup> The proposal is substantially identical to rule amendments made by other exchanges.<sup>8</sup>

The Exchange proposes to amend proposed Rule 14.11(j)(1) to replace the term “new derivative securities product” with the defined term “Derivative Security” as provided in proposed Rule 1.5(dd). Additionally, the Exchange proposes to clarify that the Early Trading Session is from 7:00 a.m. to 8:00 a.m. Eastern Time in order to consistently reference the relevant time zone throughout the paragraph.

The Exchange also proposes to add additional explanatory language to paragraph (j)(3) that states nothing in the Rule will limit the power of the Exchange under the Rules or procedures of the Exchange with respect to the Exchange's ability to suspend trading in any securities if such suspension is necessary for the protection of investors or in the public interest. The proposed text is identical to that included in NYSE National Rule 5.1(a)(2)(C). Further, the proposed text reinforces existing Exchange Rule 11.18(d).

Lastly, based on the proposal to eliminate Rule 14.11(j)(1), the Exchange proposes to renumber existing paragraphs (j)(2) through (j)(6) accordingly.

## 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. Specifically, the Exchange believes the proposed rule change is

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<sup>7</sup> 17 CFR 240.12f-2.

<sup>8</sup> See Securities Exchange Act No. 83289 (May 17, 2018) 83 FR 23968 (May 23, 2018) (SR-NYSENAT-2018-02). See also Securities Exchange Act No. 84546 (November 7, 2018) 83 FR 56888 (November 14, 2018) (SR-BX-2018-051).

consistent with the Section 6(b)(5)<sup>9</sup> 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed definitions of Derivative Security and UTP Derivative Security are reasonable as the proposed substantive changes are substantially similar to other exchanges' rules. Specifically, the proposed definition of Derivative Security in Rule 1.5(dd) is substantially similar to the definition of Exchange Traded Product provided for in NYSE National Rule 1.1(m), except that it better conforms to the defined term "new derivative securities product" of Rule 19b-4(e) under the Act. The proposed definition of UTP Derivative Securities is substantially similar to UTP Exchange Traded Product provided under NYSE National Rule 1.1(m), but includes two additional Derivative Securities, SEEDS and Exchange-Traded Fund Shares. While SEEDS and Exchange-Traded Fund Shares are not included in NYSE National Rule 1.1(m), they are Derivative Securities set forth not only in Exchange Rules 14.11(e)(12) and 14.11(l), respectively, but also in section 5700 of the Nasdaq Rules.

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<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> Id.

Eliminating the requirement to file a Form 19b-4(e) for each Derivative Security is consistent with the Act because the regulatory requirement was not intended to apply in the context of Derivative Securities trading on a UTP basis. Moreover, the proposal to eliminate Rule 14.11(j)(1) will provide for a more efficient process for adding Derivative Securities to trading on the Exchange on a UTP basis. The Exchange also notes that the proposal is substantially identical to other exchange rules.<sup>11</sup>

The Exchange believes that its proposal to amend the preamble to Rule 14.11(j) to correspond to Rule 1.5(ee) and the proposed defined term UTP Derivative Security will add clarity to the Exchange's Rules. Further, the Exchange believes that its proposal to amend the preamble to Rule 14.11(j)(1) to reference the proposed term UTP Derivative Security rather than "new derivative securities product" will conform the Rule to proposed Rule 1.5(dd) and will add clarity to the Exchange's Rules. Additionally, the proposal to add "Eastern Time" to the description of the Early Trading Session in proposed Rule 14.11(j)(1) will consistently reference the applicable time zone throughout the paragraph.

The proposed amendment to proposed Rule 14.11(j)(3) is identical to a sentence provided in NYSE National Rule 5.1(a)(2)(C) (trading halts). Furthermore, the proposal reinforces existing Exchange Rule 11.18(d). Lastly, the Exchange's proposal to renumber existing paragraphs 14.11(j)(2)-(j)(6) based on its proposal to eliminate Rule 14.11(j)(1) will clarify and simplify the Exchange's Rules.

The Exchange believes that its proposal to amend Rule 3.21 to reference the proposed definition of UTP Derivative Securities in Rule 1.5(ee) will add clarity to the Exchange's Rules.

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<sup>11</sup> See supra note 8.

In light of the above proposals, the Exchange has also proposed to renumber and re-letter certain paragraphs or subparagraphs of Rules 1.5 and 14.11 and update applicable rule references.

The proposal is intended to simplify and clarify the Exchange's Rules as it relates to UTP Derivative Securities, which the Exchange believes will 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 renumbering and re-lettering current Rules to correspond to the proposed changes will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion. For these reasons, the Exchange believes 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 purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to harmonize certain Exchange Rules with those of other exchanges which will simplify and clarify the Exchange's Rules. The Exchange further believes that the proposed rule change would promote transparency on the Exchange, thus making the Exchange's rules easier to navigate.

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

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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may 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. Waiver of the operative delay would allow certain of the Exchange's rules to conform to equivalent rules on other exchanges, as discussed herein, and to make clarifying and technical changes. The Commission therefore 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.<sup>16</sup>

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

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) under the Act 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-041 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-2021-041. 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-2021-041 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.<sup>17</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>17</sup> 17 CFR 200.30-3(a)(12).