

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92954; File No. SR-CboeBZX-2021-058)

September 13, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees in BZX Rule 14.13 Applicable to Exchange-Traded Products Listed on the Exchange

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 August 30, 2021, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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

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/](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

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

<sup>2</sup> 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)(E) related to refunds of the annual fees for listing on the Exchange where a class of securities is removed from listing during the year. Specifically, the Exchange is proposing to amend the rule to allow the Exchange to prorate and refund fees applicable to exchange-traded products (“ETPs”)<sup>3</sup> that have liquidated and as a result are delisted from the Exchange for the portion of the calendar year that such issue was listed on the Exchange, based on the percentage of trading days listed during that calendar year.

Rule 14.13(b)(2)(C) describes the annual fees applicable to issuers of ETPs listed on the Exchange. As provided in Rule 14.13(b)(2)(C)(ii), newly listed ETPs are subject to annual fees in the year of listing, prorated based on the number of trading days remaining in the calendar year. The annual fees for ETPs are billed in January for the forthcoming year. Currently, when an ETP liquidates, and as a result, is delisted from the Exchange, the issuer is responsible for the full year's annual fee as billed in January. The issuer receives no refund for amounts paid or reduction of amounts payable even though the ETP has liquidated. The Exchange proposes to amend Rule 14.13(b)(2)(C)(ii) [sic] to provide that the annual fees applicable to ETPs that have liquidated and as a result are delisted from the Exchange will be prorated for the portion of the calendar year that such issue was listed on the Exchange, based on days listed that calendar year.

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

Thus, for example, if the issuer of an ETP has paid an annual fee of \$4,000 as billed in January and such issue is liquidated and then delisted from the Exchange at the close of business on the 126th of 252 trading days in a year, the issuer would receive a refund of \$2,000, which represents a pro rata credit of annual fees owed for the year. Any such refund will be payable in the month following delisting. Notwithstanding the proposed proration of the annual fees for ETPs, the Exchange will continue to be able to fund its regulatory obligations.

The Exchange intends to implement the proposed amendments to its listing fees immediately.

## 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.<sup>4</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(4)<sup>5</sup> and 6(b)(5)<sup>6</sup> 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 is reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges because it would apply equally for all issuers. The Exchange believes that the proposed pro rata reduction of the annual fees as a result of liquidation and termination of an ETP is reasonable in that it constitutes a potential reduction in annual fees for ETPs that are liquidated and therefore are no longer

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(4).

<sup>6</sup> 15 U.S.C. 78f(b)(5).

collecting a management fee to pay for such expenses. Notwithstanding the proposed proration of the annual fees for ETPs, the Exchange will continue to be able to fund its regulatory obligations.

Based on the foregoing, the Exchange believes that the proposed rule change is 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 will permit the Exchange to better compete with other exchanges with respect to fees changed [sic] in connection with listing ETPs. 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 Act<sup>7</sup> and paragraph (f) of Rule 19b-4<sup>8</sup> 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

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<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-058 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-2021-058. 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-2021-058 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>9</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).