

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85881; File No. SR-CboeBZX-2019-042)

May 16, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule to Amend the Fees Applicable to Securities Listed on the Exchange, Set Forth in BZX Rule 14.13, Company Listing Fees

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 May 3, 2019, 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 proposes a rule change to amend the fees applicable to securities listed on the Exchange, which are set forth in BZX Rule 14.13, Company Listing Fees. Changes to the fee schedule pursuant to this proposal are effective upon filing.

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

On August 30, 2011, the Exchange received approval of rules applicable to the qualification, listing, and delisting of companies on the Exchange,³ which it modified on February 8, 2012 in order to adopt pricing for the listing of exchange traded products (“ETPs”)⁴ on the Exchange.⁵ On July 3, 2017, the Exchange made certain changes to Rule 14.13 such that there were no entry fees or annual fees for ETPs listed on the Exchange.⁶ Effective January 1, 2019, the Exchange made certain changes to Rule 14.13 in order to charge an entry fee for ETPs that are not Generically-Listed ETPs⁷ and to add annual listing fees for ETPs listed on the Exchange.⁸ The Exchange submits this proposal in order to amend Rule 14.13 in order to include

³ See Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

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

⁵ See Securities Exchange Act Release No. 66422 (February 17, 2012), 77 FR 11179 (February 24, 2012) (SR-BATS-2012-010).

⁶ See Securities Exchange Act Release No. 81152 (July 14, 2017), 82 FR 33525 (July 20, 2017) (SR-BatsBZX-2017-45).

⁷ As currently defined, the term “Generically-Listed ETPs” means Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities,_(sic) and Currency Trust Shares that are listed on the Exchange pursuant to Rule 19b-4(e) under the Exchange Act and for which a proposed rule change pursuant to Section 19(b) of the Exchange Act is not required to be filed with the Commission.

⁸ See Securities Exchange Act Release No. 83597 (July 5, 2018), 83 FR 32164 (July 11, 2018) (SR-CboeBZX-2018-46).

Linked Securities⁹ in the definition of Generically-Listed ETPs, to create pricing specific to Transfer Listings, as defined below, and to add Linked Securities to the standard annual fee schedule applicable other (sic) ETPs. In conjunction with this last change, the Exchange is proposing to eliminate Rule 14.13(b)(2)(C)(v), which currently applies only to certain Linked Securities.

Generically-Listed ETPs – Linked Securities

Currently, Generically-Listed ETPs listed on the Exchange are not subject to an entry fee on the Exchange, as provided in Rule 14.13(b)(1)(C)(ii). The reason that Generically-Listed ETPs are not subject to an entry fee on the Exchange is that they generally do not require the same additional resources as ETPs that require a proposed rule change pursuant to Section 19(b), specifically the significant additional time and extensive legal and business resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

The Exchange is proposing to add Linked Securities to the definition of Generically-Listed ETPs, meaning that any series of Linked Securities that is listed on the Exchange pursuant to Rule 19b-4(e) under the Act and for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission would not pay any entry fee for listing on the Exchange.¹⁰ Any series of Linked Securities that is not listed pursuant to Rule 19b-4(e)

⁹ As defined in Rule 14.11(d), the term “Linked Securities” includes any product listed pursuant to Rule 14.11(d), but specifically includes Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities.

¹⁰ The Exchange notes that NYSE Arca, Inc. (“Arca”) similarly does not charge an entry fee for Linked Securities that are listed pursuant to Rule 19b-4(e) under the Act and for which a proposed rule change pursuant to Section of the Act is not required to be filed with the Commission. See Arca Listing Fee Schedule for Structured Products, available: <https://www.nyse.com/publicdocs/nyse/markets/nyse->

and would require a proposed rule change pursuant to Section 19(b) of the Act would still be subject to the entry fees applicable under Rule 14.13(b)(1)(C)(i).

Transfer Listings

Currently, any ETP that transfers its listing to the Exchange from another national securities exchange is subject to the same fee schedule as a newly-listed ETP. In order to enhance the competitive environment in the exchange listing space, the Exchange is proposing certain fees specifically for Transfer Listings.¹¹ Specifically, the Exchange is proposing that Transfer Listings would not be subject to an entry fee, would have an annual listing fee of \$4,000, and would not be subject to an annual fee for the remainder of the calendar year following the date of listing on the Exchange.¹²

Linked Securities - Annual Fees

Currently, where an ETP is not a Legacy Listing,¹³ a New Listing,¹⁴ or an Auction Fee Listing,¹⁵ but is a series of Linked Securities, such an ETP will be subject to the following annual

[arca/NYSE Arca Listing Fee Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Listing_Fee_Schedule.pdf).

¹¹ As part of this proposal, the Exchange is also proposing to amend Rule 14.13(b)(1)(C)(ii) to include the defined term “Transfer Listing,” which shall mean any ETP that transfers its listing from another national securities exchange to the Exchange.

¹² The waiver of the annual fee for Transfer Listings is substantively identical to fees currently implemented on Arca. See Arca Listing Fee Schedule, Waiver of Annual Fee for Transfer Listings, available: [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE Arca Listing Fee Schedule.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Listing_Fee_Schedule.pdf).

¹³ A Legacy Listing, as defined in Rule 14.13(b)(2)(C)(i), is any ETP that was listed on the Exchange prior to January 1, 2019. All ETPs listed on the Exchange that are a Legacy Listing have an annual listing fee of \$4,000.

¹⁴ A New Listing, as defined in Rule 14.13(b)(2)(C)(ii), is an ETP during its first calendar year being listed on the Exchange or an ETP in its second calendar year being listed on the Exchange that was listed in the fourth quarter of its first calendar year. All New Listings have an annual listing fee of \$4,500.

¹⁵ An “Auction Fee Listing, as defined in Rule 14.13(b)(2)(C)(iii), refers to each of an issuer’s ETPs where the average daily auction volume combined between the opening

listing fee based on the CADV in the fourth quarter of the preceding calendar year:

CADV Range	Annual Listing Fee
0-10,000 shares	\$15,000
10,001-100,000 shares	\$14,000
100,001-1,000,000 shares	\$13,000
Greater than 1,000,000 shares	\$12,000

The Exchange is proposing to eliminate this fee structure entirely by deleting Rule 14.13(b)(2)(C)(v) and to amend Rule 14.13(b)(2)(C)(iv) to include Linked Securities such that the annual listing fees applicable to all ETPs that are not a Legacy Listing, a New Listing, an Auction Fee Listing, or, as proposed herein, a Transfer Listing, apply as follows:

CADV Range	Annual Listing Fee
0-10,000 shares	\$7,000
10,001-100,000 shares	\$6,000
100,001-1,000,000 shares	\$5,500
Greater than 1,000,000 shares	\$5,000

This change would reduce fees for Linked Securities that are not a Legacy Listing, New Listing, or Auction Fee Listing by more than 50% and would either reduce or keep the same the annual fees for all Linked Securities listed on the Exchange.

Implementation Date

The Exchange proposes to implement these amendments to its fees on May 3, 2019.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements

and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares. Auction Fee Listings have no annual listing fee.

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.¹⁶ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) and 6(b)(5) of the Act,¹⁷ 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.

Generically-Listed ETPs – Linked Securities

The Exchange believes that the proposed amendment to Rule 14.13(b)(1)(C) to include Linked Securities in the definition of Generically-Listed ETPs and, thus eliminate the entry fee for Linked Securities that are listed on the Exchange pursuant to Rule 19b-4(e) under the Act and for which a proposed rule change pursuant to Section 19(b) of the Act is not required to be filed with the Commission 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 Linked Securities. The Exchange believes that eliminating the entry fee for Linked Securities that are Generically-Listed ETPs is reasonable given that the resources necessary for bringing such listings to market are generally consistent with those ETPs currently included in the definition of Generically-Listed ETPs. Further, the Exchange believes that it is reasonable, fair and equitable, and not unfairly discriminatory to distinguish between Linked Securities that are Generically-Listed ETPs and those Linked Securities that are not Generically-Listed ETPs because of the additional resources required by the Exchange in connection with ETPs requiring a proposed rule change pursuant to Section 19(b), specifically the significant additional time and extensive legal

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

and business resources required by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings. Further, the Exchange notes that this proposal is not proposing to make any changes to entry fees for Linked Securities that are not Generically-Listed ETPs. As noted above, Arca similarly does not charge an entry fee for Linked Securities that are listed pursuant to Rule 19b-4(e) under the Act and for which a proposed rule change pursuant to Section of the Act is not required to be filed with the Commission.¹⁸

Transfer Listings

The Exchange believes that it is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to eliminate entry fees, eliminate an annual fee for the remainder of the calendar year following the date of listing on the Exchange, and offer lower annual listing fees for Transfer Listings because such changes will incentivize issuers to transfer ETPs to the Exchange, which will create a more competitive landscape for ETP listing venues, to the benefit of all issuers, ETPs, and investors in ETPs. More specifically, the Exchange believes that it is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to eliminate entry fees for Transfer Listings because Transfer Listings that would otherwise be subject to entry fees on the Exchange: (i) generally require fewer Exchange resources to list on the Exchange than new ETP listings that are subject to an entry fee on the Exchange; and (ii) have generally already paid an entry fee on another listing venue and having to pay such fee again would be a strong disincentive to transferring the ETP to the Exchange.

¹⁸ See Arca Listing Fee Schedule for Structured Products, available: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Listing_Fee_Schedule.pdf.

Similarly, the Exchange believes that it is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges to not charge an annual fee for the remainder of the calendar year after transferring to the Exchange because such Transfer Listing would have already paid an annual listing fee to the national securities exchange that they are currently listed on and requiring payment of an annual fee would essentially be double-charging an annual fee and would act as a strong disincentive for transferring the listing to the Exchange.¹⁹

The Exchange also believes that the proposed change to charge a \$4,000 annual fee to Transfer Listings is not unfairly discriminatory because it will: (i) incentivize ETPs to transfer their listing to the Exchange; (ii) provide Transfer Listings with certainty related to annual fees on the Exchange; (iii) create a small distinction in pricing that will enhance competition among ETP listing venues to the benefit of all ETPs, issuers, and investors; (iv) is generally in line with additional reduced fees available to ETPs currently listed on the Exchange; and (v) is available to all issuers and ETPs that transfer ETP listings to the Exchange.

The Exchange notes that the rationale behind this proposed change is very similar to that of the Legacy Listing fees. Specifically, the Legacy Listing fees were designed to incentivize transfers to the Exchange in advance of the implementation of ETP listing fees on the Exchange on January 1, 2019, and to provide long-term certainty around annual fees for all ETPs listed on the Exchange. Similarly, the Exchange is proposing to make this change in order to incentivize ETP transfers to the Exchange, but also to provide such Transfer Listings with long-term certainty related to annual fees. While the Legacy Listings pricing applies equally to all issuers (whether transferred or originally listed on the Exchange) and the proposed annual fees for

¹⁹ As noted above, the waiver of the annual fee is substantively identical to fees currently implemented on Arca. See Arca Listing Fee Schedule, Waiver of Annual Fee for Transfer Listings, available: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Listing_Fee_Schedule.pdf.

Transfer Listings would not apply to ETPs already listed on the Exchange, the Exchange believes that such a distinction is justified based on the overall enhancement to competition among market participants that results from such pricing. Further, the Exchange does not believe that this proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors and notes that the Exchange's annual fees for ETP listing generally remain lower than other national securities exchanges. Further, the Exchange is not proposing to raise the annual fee for any ETPs listed on the Exchange and, as such, there is no negative impact to ETPs listed on the Exchange (either currently or in the future) that are not Transfer ETPs. The Exchange also notes that issuers and ETPs may opt to disfavor the Exchange's pricing if they believe that alternatives offer them a better value.

The Exchange further notes that this proposed change is also similar to listing fees implemented by Investors Exchange, LLC ("IEX") in 2017.²⁰ Specifically, IEX offered credits of at least \$250,000 to be paid out over up to five years to corporate issuers that announced a transfer of their listing to IEX within 120 days of the first listing on IEX. Similar to what the Exchange is proposing, such credits were not applicable to a new listing that was not a transfer. The Exchange believes that the policy issues and arguments underlying the IEX Transfer Incentive Filing are nearly identical to those applicable to this proposed change, with the exception of the scope of payments applicable under this proposed change. Assuming the greatest possible annual fee savings, it would take a Transfer Listing 83-plus years to receive the same economic benefit as was proposed as a minimum on an annual basis (sic) under the IEX Transfer Incentive Filing.²¹

²⁰ See Securities Exchange Act Release No. 81725 (September 26, 2017), 82 FR 45917 (October 2, 2017) (SR-IEX-2017-30) (the "IEX Transfer Incentive Filing").

²¹ The greatest annual fee for an ETP listed on the Exchange is \$7,000 (applicable only to

The Exchange further believes that the proposed change to charge a \$4,000 annual fee to Transfer Listings is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it represents a relatively small difference in annual fees while working to promote transfers and enhance competition among ETP listing venues. While ETPs that are currently listed on the Exchange would be subject to the Exchange's standard annual listing fee schedule, such fee schedule provides New Listings with reduced pricing (\$4,500 annual listing fee prorated based on number of trading days remaining in the year, as described above), as well as more established ETPs with reduced annual fees as the trading volume in the product increases. The Exchange further eliminates the annual fee entirely for all Auction Fee Listings as well. As such, the Exchange believes that the benefit to the broader marketplace that comes from increased competition among ETP listing venues significantly outweighs any concerns related to discrimination in fees because of the several additional ways that ETPs can achieve reduced annual fees combined with the relatively insubstantial difference in pricing for existing listings as compared to Transfer Listings.

Linked Securities - Annual Fees

The Exchange believes that the proposed amendment to delete Rule 14.13(b)(2)(C)(v) and to amend Rule 14.13(b)(2)(C)(iv) such that the standard annual listing fees would be applicable to Linked Securities is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would create a consistent application of fees and other charges applicable to all issuers and ETPs listed on the Exchange. Further, such fees generally reflect the additional revenue that an ETP listed on the Exchange

those ETPs that have fewer than 10,000 shares traded per day), compared to the proposed \$4,000 annual fee for Transfer Listings would make a difference of \$3,000 annually. $\$250,000 / \$3,000 = 83.33$.

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. As such, the Exchange offers lower annual listing fees for ETPs listed on the Exchange as their CADV increases. 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. Finally, the Exchange notes that such change will simplify the Exchange's ETP fee schedule by having a single set of fees based on CADV apply to all types of ETPs listed on the Exchange.

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 entry fees for Linked Securities that qualify as Generically-Listed ETPs, the Exchange does not believe that the changes burden competition, but instead, enhance competition by reducing the cost associated with bringing Linked Securities to market and bringing such cost more in line with the cost of resources associated with bringing such a listing to market for the Exchange. With respect to the reduction of fees associated with Transfer Listings, the Exchange believes that such proposed changes will directly enhance competition among ETP listing venues by reducing the costs associated with transferring listings between such venues. Similarly, the Exchange believes that reducing standard annual fees for Linked Securities to bring them in line with all other ETP types on the Exchange will enhance

competition both among listing venues of Linked Securities and among issuers and issuances of Linked Securities through an overall reduction of annual fees for listing such products. 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 Act²² and paragraph (f) of Rule 19b-4²³ 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2019-042 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-2019-042. 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-2019-042 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.²⁴

Eduardo A. Aleman
Deputy Secretary

²⁴ 17 CFR 200.30-3(a)(12).