SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87108; File No. SR-CboeBZX-2019-067)

September 25, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to List and Trade Shares of the Innovator-100 Buffer ETF Series, Innovator Russell 2000 Buffer ETF Series, Innovator-100 Power Buffer ETF Series, Innovator Russell 2000 Power Buffer ETF Series, Innovator-100 Ultra Buffer ETF Series, and Innovator Russell 2000 Ultra Buffer ETF Series Under Rule 14.11(i)

I. Introduction

On July 18, 2019, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade the shares ("Shares") of the Innovator-100 Buffer ETF Series and Innovator Russell 2000 Buffer ETF Series (collectively, the "Buffer Funds"), Innovator-100 Power Buffer ETF Series and Innovator Russell 2000 Power Buffer ETF Series (collectively, the "Power Buffer Funds"), and Innovator-100 Ultra Buffer ETF Series and Innovator Russell 2000 Ultra Buffer ETF Series (collectively, the "Ultra Buffer Funds," and together with the Buffer Funds and Power Buffer Funds, the "Funds") under BZX Rule 14.11(i). The proposed rule change was published for comment in the Federal Register on August 5, 2019.[3] On August 29, 2019, the Exchange filed Amendment No. 1 to the proposed rule change. On September 17, 2019, the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or

1 15 U.S.C.78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 86511 (July 30, 2019), 84 FR 38078.

disapprove the proposed rule change.[4] On September 19, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and superseded the proposed rule change as modified by Amendment No. 1.[5] On September 24, 2019, the Exchange filed partial Amendment No. 3 to the proposed rule change.[6] The Commission has received no comments on the proposed rule change. This order approves the proposed rule change, as modified by Amendment Nos. 2 and 3.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. In total, the Exchange is proposing to list and trade Shares of up to twelve monthly series of each of the Funds. The Shares will be offered by Innovator ETFs Trust ("Trust"), a Delaware statutory trust.[7] The

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4 See Securities Exchange Act Release No. 86996, 84 FR 49779 (September 23, 2019) (extending the time period to November 3, 2019).

5 In Amendment No. 2, the Exchange: (1) deleted its representation about the index provider implementing and maintaining a firewall; (2) modified the downside protection in the Buffer Funds from 10% to 9%; (3) clarified descriptions about the investment methodology of the Funds; (4) modified descriptive terms on the liquidity and competitive market for options on the reference indexes; (5) identified options exchanges trading standardized and FLexible EXchange Options ("FLEX Options") on the reference indexes (6) updated volume information on standardized options in the reference indexes; and (7) made other technical, non-substantive changes.

6 The amendments to the proposed rule change are available at: https://www.sec.gov/comments/sr-cboebzx-2019-067/srcboebzx2019067.htm. In partial Amendment No. 3, the Exchange clarified a description related to the Buffer Funds. Because Amendment Nos. 2 and 3 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment Nos. 2 and 3 are not subject to notice and comment.

7 The Trust is registered with the Commission as an investment company and has filed a registration statement for each Fund with the Commission on Form N-1A (File Nos. 333-146827 and 811-22135) ("Registration Statement") under the Securities Act of 1933 (15 U.S.C. 77a), dated February 6, 2019. According to the Exchange, the description of the operation of the Funds and the Shares herein is based, in part, on the Registration Statement.

investment adviser to the Funds is Innovator Capital Management, LLC ("Adviser"), and the sub-adviser to the Funds is Milliman Financial Risk Management LLC ("Sub-Adviser").

The investment objective of the Funds is to provide investors with returns that match those of the Nasdaq-100 Index (the "Nasdaq-100 Price Index") or the Russell 2000 Price Index (the "Russell 2000 Price Index") (collectively, the "Reference Indexes") over a period of approximately one year, while providing a level of protection from losses in the applicable Reference Index.

A. Buffer Funds

The Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the "Buffer Cap Level"),[8] while guarding against a decline in the Reference Index for the first 9%. Specifically, the Buffer Fund is designed to provide the following results during the outcome period:

- If the Reference Index appreciates over the outcome period: The Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Buffer Cap Level;
- If the Reference Index decreases over the outcome period by 9% or less: The Buffer Fund is designed to provide a total return of zero; and

[8] The Exchange states that the Buffer Cap Level will be determined with respect to each Buffer Fund on the inception date of the Buffer Fund and at the beginning of each outcome period. See Amendment No. 2, supra note 5, at 10-11.

- If the Reference Index depreciates over the outcome period by greater than 9%: The Buffer Fund is designed to provide a total return loss that is 9% less than the percentage loss on the Reference Index with a maximum loss of approximately 91%.[9]

The Buffer Fund is designed to produce these outcomes by including theoretically "purchased" and "written" FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions,[10] each Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains of the applicable Reference Index. Each Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or exchange traded funds ("ETFs") that track the Reference Index.[11] Any FLEX Options written by a Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Buffer Fund to create the right to buy or sell the same asset such that the Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

B. Power Buffer Funds

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9 The Exchange states that the Buffer Funds do not offer any protection against declines in the Reference Index exceeding 9% on an annualized basis. See id. at 10. Shareholders will bear all Reference Index losses exceeding 9% on a one-to-one basis. See id.

10 As defined in BZX Rule 14.11(i)(3)(E), the term "Normal Market Conditions" includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

11 The FLEX Options owned by each of the Buffer Funds will have the same terms (i.e., same strike price and expiration) for all investors of a Buffer Fund within an outcome period. See Amendment No. 2, supra note 5, at 10.

The Power Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the "Power Buffer Cap Level"),[12] while guarding against a decline in the Reference Index for the first 15%. Specifically, the Power Buffer Fund is designed to provide the following results during the outcome period:

- If the Reference Index appreciates over the outcome period: The Power Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Power Buffer Cap Level;
- If the Reference Index decreases over the outcome period by 15% or less: The Power Buffer Fund is designed to provide a total return of zero; and
- If the Reference Index depreciates over the outcome period by greater than 15%: The Power Buffer Fund is designed to provide a total return loss that is 15% less than the percentage loss on the Reference Index with a maximum loss of approximately 85%.[13]

The Power Buffer Fund is designed to produce these outcomes by including theoretically "purchased" and "written" FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions, each Power Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains

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12 The Exchange states that the Power Buffer Cap Level will be determined with respect to each Power Buffer Fund on the inception date of the Power Buffer Fund and at the beginning of each outcome period. See Amendment No. 2, supra note 5, at 12-13.

13 The Exchange states that the Power Buffer Funds do not offer any protection against declines in the Reference Index exceeding 15% on an annualized basis. See id. at 12. Shareholders will bear all Reference Index losses exceeding 15% on a one-to-one basis. See id.

of the applicable Reference Index. Each Power Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index.[14] Any FLEX Options written by a Power Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Power Buffer Fund to create the right to buy or sell the same asset such that the Power Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

C. Ultra Buffer Funds

The Ultra Buffer Funds are actively managed funds that seek to provide investment returns that match the gains of the applicable Reference Index, up to a maximized annual return (the "Ultra Buffer Cap Level"),[15] while guarding against a decline in the Reference Index of between 5% and 35%. Specifically, the Ultra Buffer Fund is designed to provide the following results during the outcome period:

- If the Reference Index appreciates over the outcome period: The Ultra Buffer Fund is designed to provide a total return that matches the total return of the applicable Reference Index, up to the applicable Ultra Buffer Cap Level;
- If the Reference Index decreases over the outcome period by 5% or less: The Ultra Buffer Fund is designed to provide a total return loss that is equal to the percentage loss on the Reference Index;

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14 The FLEX Options owned by each of the Power Buffer Funds will have the same terms (i.e., same strike price and expiration) for all investors of a Power Buffer Fund within an outcome period. See id.

15 The Exchange states that the Ultra Buffer Cap Level will be determined with respect to each Ultra Buffer Fund on the inception date of the Ultra Buffer Fund and at the beginning of each outcome period. See Amendment No. 2, supra note 5, at 12-13.

- If the Reference Index depreciates over the outcome period by 5%-35%: The Ultra Buffer Fund is designed to provide a total return loss of 5%; and
- If the Reference Index depreciates over the outcome period by more than 35%: The Ultra Buffer Fund is designed to provide a total return loss that is 30% less than the percentage loss on the Reference Index with a maximum loss of approximately 70%.[16]

The Ultra Buffer Fund is designed to produce these outcomes by including theoretically "purchased" and "written" FLEX Options that, when layered upon each other, are designed to buffer against losses of the applicable Reference Index and cap the level of possible gains.

Under Normal Market Conditions, each Ultra Buffer Fund will attempt to achieve its investment objective by taking positions that provide performance exposure that match the gains of the applicable Reference Index. Each Ultra Buffer Fund will invest primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index.[17] Any FLEX Options written by a Ultra Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Ultra Buffer Fund to create the right to buy or sell the same asset such that the Ultra Buffer Fund will always be in a net long position. As the FLEX Options mature at the end of each outcome period, they are replaced.

D. Investment Methodology for the Funds

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16 The Exchange states that the Ultra Buffer Funds do not offer any protection against declines in the Reference Index exceeding 35% on an annualized basis. See id. at 14. Shareholders will bear all Reference Index losses exceeding 35% on a one-to-one basis. See id.

17 The FLEX Options owned by each of the Ultra Buffer Funds will have the same terms (i.e., same strike price and expiration) for all investors of an Ultra Buffer Fund within an outcome period. See id. at 15.

As mentioned above, under Normal Market Conditions, each Fund would seek to achieve its respective investment objective by investing primarily in exchange-traded options contracts that reference either the Reference Index or ETFs that track the Reference Index. Each of the Funds might invest its net assets (in the aggregate) in other investments which the Adviser or Sub-Adviser believes would help each Fund meet its investment objective and that would be disclosed at the end of each trading day ("Other Assets").[18]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, 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

[18] Other Assets include only cash or cash equivalents, as defined in BZX Rule 14.11(i)(4)(C)(iii), and standardized options contracts listed on a U.S. securities exchange that reference either the Reference Index or that reference ETFs that track the Reference Index ("Reference ETFs"). As defined in BZX Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

interest. The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

According to the Exchange, quotation and last-sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority.[22] RFQ information for FLEX Options will be available directly from the applicable options exchange. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services.[23] In addition, price information about cash equivalents will be available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.[24]

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. Under BZX Rule 14.11(i)(4)(B)(iv), if the Exchange becomes aware that the Net Asset Value ("NAV") or the Disclosed Portfolio is not disseminated to all market participants at the same time, the Exchange is required to halt trading in such series of Managed Fund Shares. In

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21 15 U.S.C. 78k-1(a)(1)(C)(iii).

22 See Amendment No. 2, supra note 5, at 21.

23 See id.

24 See id.

addition, the Exchange represents that if the Funds or the Shares are not in compliance with the applicable listing requirements for Managed Funds Shares under BZX Rule 14.11(i), the Exchange will commence delisting procedures under BZX Rule 14.12 (Failure to Meet Listing Standards).[25] The Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[26] Further, the Trust has represented that it will provide and maintain a publicly available tool on its website that will provide existing and prospective Fund shareholders with certain information for each of the Funds including, among other things, current NAV, start and end dates of the current outcome period, and the remaining buffer available for a shareholder purchasing Shares at the current NAV or the amount of losses that a shareholder purchasing Shares at the current NAV would incur before benefitting from the protection of the buffer.[27]

The Shares do not qualify for generic listing because the Funds will not satisfy the requirement of BZX Rule 14.11(i)(4)(C)(iv)(b) that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio and the aggregate gross notional value of listed derivatives based on any single underlying reference asset not exceed 30% of the weight of the portfolio (including gross notional exposures). Instead, the Funds will hold listed derivatives primarily on a single reference asset, the Nasdaq-100 Index or the Russell 2000 Price Index.[28] Despite the exposure of

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25 See id. at 25.

26 See id.

27 See id. at 22.

28 The Funds also may invest in options overlying Reference ETFs. See id. at 15. The Exchange states that each of the applicable Reference Indexes meet the generic listing standards applicable to indexes underlying series of Index Fund Shares listed on the Exchange, which include diversity, liquidity, and market cap requirements that are

the listed derivatives to a single reference asset, the Commission nevertheless believes that certain representations by the Exchange help to mitigate concerns about the prices of the Shares being susceptible to manipulation. Specifically, the Exchange represents that the market for options contracts for each Reference Index are liquid and derive their value from actively traded Reference Index components. Additionally, all of the options held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[29]

Additionally, in support of this proposal, the Exchange represents that:

(1) The Funds and the Shares will satisfy all of the requirements applicable to Managed Fund Shares under BZX Rule 14.11(i), as well as the Generic Listing Standards other than BZX Rule 14.11(i)(4)(C)(iv)(b).

(2) Trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.

(3) For initial and continued listing, the Funds will be in compliance with Rule 10A-3 under the Act.[30]

(4) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.[31]

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designed to ensure that an underlying index is not susceptible to manipulation. See id. at 17, n.14.

29 For a list of the current members of ISG, see www.isgportal.org.

30 17 CFR 240.10A-3.

31 See Amendment No. 2, supra note 5, at 20.

This approval order is based on all of the Exchange's statements and representations, including those set forth above and in Amendment Nos. 2 and 3.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3 thereto, is consistent with Section 6(b)(5) of the Act[32] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[33] that the proposed rule change (SR-CboeBZX-2019-067), as modified by Amendment Nos. 2 and 3, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

Jill M. Peterson
Assistant Secretary

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32 15 U.S.C. 78f(b)(5).

33 Id.

34 17 CFR 200.30-3(a)(12).