

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93546; File No. SR-CboeBZX-2021-075)

November 9, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Reflect a Modification to the Permitted Components of the Tracking Baskets of the Invesco Real Assets ESG ETF and Invesco US Large Cap Core ETF

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 November 2, 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 and II below, which Items have been prepared by the self-regulatory organization. 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”) proposes to reflect an amendment to the Reference Order relied upon by the Invesco Real Assets ESG ETF and Invesco US Large Cap Core ESG ETF, shares of which are listed and traded on the Exchange under BZX Rule 14.11(m).

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange adopted BZX Rule 14.11(m) for the purpose of permitting the listing and trading, or pursuant to unlisted trading privileges (“UTP”), of Tracking Fund Shares, which are securities issued by an actively managed open-end management investment company.³ Exchange

³ See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF (“Approval Order”). Rule 14.11(m)(3)(A) provides that “[t]he term “Tracking Fund Share” means a security that (i) represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. Rule 14.11(m)(3)(E) provides that “[t]he term “Tracking Basket” means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the

Rule 14.11(m)(2)(A) requires the Exchange to file separate proposals under Section 19(b) of the Act before listing and trading any series of Tracking Fund Shares on the Exchange. Pursuant to this provision, the Exchange submitted proposals to list and trade shares (“Shares”) of Tracking Fund Shares of the following funds under BZX Rule 14.11(m): Invesco Real Assets ESG ETF and Invesco US Large Cap Core ESG ETF (each, a “Fund” and, together the “Funds”).⁴

Among others, Invesco Actively Managed Exchange-Traded Fund Trust (the “Issuer”), issued a second amended and restated application for an order under Section 6(c) of the 1940 Act for exemptions from various provisions of the 1940 Act and rules thereunder (the “Application”).⁵ On October 27, 2020, the Commission issued an order (the “Prior Exemptive Order”) under the 1940 Act granting the exemptions requested in the Application.⁶ The relief in the Prior Exemptive Order incorporates by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (the “Reference Order”).⁷

Under the Prior Exemptive Order, the Funds are required to publish a basket of securities and cash that, while different from the Fund’s portfolio, is designed to closely track its daily performance (i.e., the Tracking Basket). The Prior Exemptive Order provided that the Tracking Basket will solely consist of a combination of (i) select recently disclosed portfolio holdings

exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares.”

⁴ See Securities Exchange Act Release No. 90686 (December 16, 2020) 85 FR 83657 (December 22, 2020) (SR-CboeBZX-2020-090).

⁵ See File No. 812-15141, dated September 30, 2020.

⁶ See Investment Company Act Release No. 34076, October 27, 2020.

⁷ The Reference Order refers to the Fidelity Beach Street Trust, et al., Investment Company Act Rel. Nos. 33683 (Nov. 14, 2019) (notice) and 33712 (Dec. 10, 2019) (order).

(“Strategy Components”); (ii) liquid U.S. exchange-traded funds (“ETFs”) that convey information about the types of instruments (that are not otherwise fully represented by the Strategy Components) in which a Fund invests (“Representative ETFs”); and (iii) cash and cash equivalents. Exchange Rule 14.11(m)(4)(B)(iii)(c) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 if, among other things, the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission or the Commission staff under the 1940 Act to the Investment Company with respect to the series of Tracking Funds Shares. On August 5, 2021, the Commission issued an amended order to the Reference Order that, among other things, permits the Issuer to include select securities from which a Fund’s investment are selected such as a broad-based market index (“Investment Universe”) in the Fund’s Tracking Basket (the “Amended Reference Order”).⁸ The Funds will comply with this condition of the Amended Reference Order and the Exchange is updating the listing rule for the Shares accordingly. Except for the change noted above, all other representations made in the rule filing remain unchanged and will continue to constitute continuing listing requirements for the Funds. The Funds will also continue to comply with the requirements of Rule 14.11(m).

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁹ Specifically, the

⁸ See Investment Company Act Release No. 34350, August 5, 2021.

⁹ 15 U.S.C. 78f(b).

Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed revision is intended to reflect the change in the Amended Reference Order that permits the Issuer to include select securities from the Fund's Investment Universe in the Fund's Tracking Basket. The proposed rule change would permit the Funds to operate consistent with the Prior Exemptive Order, which incorporates the Reference Order that may be amended from time to time. Furthermore, Exchange Rule 14.11(m)(4)(B)(iii)(c) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Tracking Fund Shares pursuant to Rule 14.12 if, among other things, the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission of the Commission Staff under the 1940 Act to the Investment Company with respect to the series of Tracking Funds Shares. By clearly identifying the change in the committed components of each Funds' Tracking Basket, the proposed Rule change will assist the Exchange in complying this aspect of the listing rule, as modified, consistent with

¹⁰ 15 U.S.C. 78f(b)(5).

section 6(b)(1) of the Act.¹¹ Except for the changes noted above, all other representations made in the respective rule filings remain unchanged and, as noted, will continue to constitute continuing listing requirements for the Funds.

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 purpose of the Act. As noted, the purpose of the filing is to reflect an amendment to the Reference Order governing the listing and trading of these Funds. As noted, the effect of this filing is to allow an adjustment to the components of the Tracking Baskets for each of the Funds. The Exchange believes this will not impose any burden on competition.

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)(iii) of the Act¹² and subparagraph (f)(6) of Rule 19b-4 thereunder.¹³

¹¹ 15 U.S.C. 78f(b)(1).

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ 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 so that the proposed rule change may take effect upon filing. The Exchange states that the proposed rule change raises no novel regulatory issues because the Funds will continue to comply with the requirements of BZX Rule 14.11(m). The Exchange also notes that a similar proposal to amend the listing rules of other shares that BZX also lists and trades pursuant to Rule 14.11(m) is currently in effect.¹⁶ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.¹⁷

At any time within 60 days of the filing of such 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 shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

¹⁶ See Securities and Exchange Act No. 92946 (September 13, 2021) 86 FR 51941 (September 17, 2021) (SR-CboeBZX-2021-060).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-075 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-2021-075. 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-2021-075 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).