

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101406; File No. SR-CboeBZX-2024-097)

October 22, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Company Listing Fees in BZX Rule 14.13

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on October 9, 2024, 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 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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed 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. The text of the proposed rule change is provided in Exhibit 5.

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

On January 1, 2019, the Exchange adopted an entry fee for exchange-traded products (“ETPs”)³ that are not “Generically-Listed ETPs”.⁴ The entry fee adopted in the Original Entry Fee Filing imposed a maximum entry fee on an issuer basis of \$22,500 per calendar year. Now, the Exchange proposes to eliminate the yearly \$22,500 maximum entry fee (the “entry fee cap”) applied to issuers. The Exchange also proposes to amend Rule 14.13 in order to adopt a separate fee of \$3,500 per ETP for Companies⁵ that make a change to a product already approved for listing and trading on the Exchange that requires a proposed rule change pursuant to Section 19(b) of the Exchange Act (an “Exchange Rule Filing Amendment”).⁶

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

⁴ “Generically-Listed ETPs” refers to all ETPs, with the exception of Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, Currency Trust Shares, and Exchange-Traded Fund 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. See Exchange Rule 14.13(b)(1)(B)(v)(a). See Securities Exchange Act No. 83597 (July 5, 2018) 83 FR 32164 (July 11, 2018) (SR-CboeBZX-2018-046) (the “Original Entry Fee Filing”).

⁵ See Exchange Rule 14.1(a)(3).

⁶ The Exchange initially filed the proposed fee change on September 12, 2024 (SR-CboeBZX-2024-086). On September 19, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-090. On September 30, 2024, the Exchange withdrew that filing and submitted SR-CboeBZX-2024-095. On

Entry Fee Cap

Rule 14.13(b)(1)(B)(v) sets forth the entry fees applicable to ETPs, which charge an entry fee of \$7,500 per ETP that is not a Generically-Listed ETP. Specifically, ETPs that are not Generically-Listed ETPs require an Exchange Rule Filing⁷ to list and trade the ETP on the Exchange, and thus require significantly more time and Exchange resources to bring to market than Generically-Listed ETPs. Rule 14.13(b)(1)(B)(v)(a)(2) also provides that each issuer will be subject to an aggregate maximum entry fee of \$22,500 per calendar year. Therefore, an issuer is only required to pay an entry fee for a maximum of three new ETPs that are not Generically Listed ETPs per year.

Now, the Exchange proposes to eliminate the yearly \$22,500 entry fee cap applied to ETP issuers. The Exchange believes that eliminating the entry fee cap would address the costs associated with preparing more than three Exchange Rule Filings for an issuer on an annual basis.

The Exchange also proposes to combine the text of existing Exchange Rule 14.13(b)(1)(B)(v)(a)(1) and Exchange Rule 14.13(b)(1)(B)(v)(a) and to correspondingly delete the (1) from the Rulebook.

Exchange Rule Filing Amendment Fee

The Exchange also proposes to adopt Rule 14.13(b)(4) which would provide for an Exchange Rule Filing Amendment fee of \$3,500 per ETP. The proposed Exchange Rule Filing Amendment fee would apply to a Company that makes a change to a product already approved

October 9, 2024, the Exchange withdrew that filing and submitted this proposal.

⁷ An initial Exchange Rule Filing refers to the proposed rule change filed pursuant to Section 19(b) of the Exchange Act required to initially list and trade an ETP on the Exchange. See Exchange Rule 14.13(b)(1)(B)(v)(a).

for listing and trading on the Exchange that would require the Exchange to prepare an Exchange Rule Filing Amendment. In general, any change that requires a new or amended representation from the initial Exchange Rule Filing would require an Exchange Rule Filing Amendment. Such a fee would be used to address the costs associated with preparing and submitting an Exchange Rule Filing Amendment when Companies make a change that would require such an amendment. The Exchange notes that Companies making multiple changes that are addressed in the same Exchange Rule Filing Amendment would only be charged \$3,500 total and would not be charged for each individual change in the Exchange Rule Filing Amendment.⁸ The Exchange will charge for each Exchange Rule Filing Amendment unless it is in furtherance of the same continuous effort. Specifically, similar to existing Rule 14.13(b)(1)(B)(v)(a)(1), proposed Rule 14.13(b)(4) would provide that an Exchange Rule Filing Amendment will be considered in furtherance of the same continuous effort if: the Exchange Rule Filing Amendment is required for ministerial purposes related to another previously filed Exchange Rule Filing Amendment,⁹ or if the Exchange Rule Filing Amendment is withdrawn and refiled within 30 calendar days.¹⁰

The Exchange proposes to implement the proposed fees effective September 10, 2024.

⁸ An Exchange Rule Filing Amendment that modified representations across multiple ETPs in the same Exchange Rule Filing Amendment would be charged the fee for each individual ETP.

⁹ Specifically, the Exchange would not assess an additional fee to an ETP in the event that an Exchange Rule Filing Amendment was submitted to the Commission, rejected by the Commission, and shortly thereafter resubmitted. Instances where Exchange Rule Filing Amendments are either rejected or withdrawn and refiled shortly thereafter often involve minor or ministerial errors that are in furtherance of the same continuous effort.

¹⁰ The proposed fee would not be applicable to an amendment to an open Exchange Rule Filing Amendment. For example, assume the Exchange has already made an Exchange Rule Filing Amendment to amend a representation in the initial filing to list and trade the ETP. If another Exchange Rule Filing Amendment (e.g., amendment no. 2 to the previously filed Exchange Rule Filing Amendment) is necessary, the Exchange would not charge an additional Exchange Rule Filing Amendment fee. As another example, if a partial amendment no. 3 is needed to that Exchange Rule Filing Amendment, the Exchange would not charge an additional Exchange Rule Filing Amendment Fee for that partial amendment. Stated differently, the proposed fee would not be applicable to an amendment to an open Exchange Rule Filing Amendment.

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.¹¹ Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹³ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that proposed Rules 14.13(b)(1)(B)(v)(a) and 14.13(b)(4), which are both designed to address the Exchange's costs in preparing and filing Exchange Rule Filings and Exchange Rule Filing Amendments, are reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and other charges because they would apply equally to all Companies. Specifically, the Exchange's proposal to eliminate the entry fee cap for ETPs would only impact Companies that require more than three Exchange Rule Filings in a given calendar year. As each Exchange Rule Filing requires significant Exchange resources on an individual basis, and because there is no reduced cost to the Exchange for preparing multiple Exchange Rule Filings for a single Company, the Exchange believes it reasonable to address the Exchange's cost in preparing such Exchange Rule Filings even if they exceed three in a given year for a given Company. The Exchange also believes its proposal to adopt an Exchange Rule Filing Amendment fee is reasonable given the additional resources required by the Exchange in connection with ETPs requiring an Exchange Rule Filing Amendment pursuant to Section 19(b),

¹¹ 15 U.S.C. 78f(b).

¹² Id.

¹³ 15 U.S.C. 78f(b)(4).

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 believes the technical change to combine Rule 14.13(b)(1)(B)(v)(a) and Rule 14.13(b)(1)(B)(v)(a)(1) is consistent with Section 6(b)(1)¹⁴ because it will allow Members of the Exchange to more easily interpret Exchange Rules.

Furthermore, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including listing fees. The proposed rule change reflects a competitive pricing structure, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

Based on the foregoing, the Exchange believes that the proposed rule changes are consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. With respect to the proposal to eliminate the entry fee cap for ETPs and adopt a new fee for each Exchange Rule Filing Amendment, the Exchange does not believe that the changes burden competition, but instead, enhance competition, as they are intended to address the costs associated with preparing an Exchange Rule Filing and Exchange Rule Filing Amendment when Companies require such filings. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing for such rule filings that better reflects expenses

¹⁴ 15 U.S.C. 78f(b)(1).

associated with listing ETPs on the Exchange. The Exchange does not believe the proposed amendment would burden intramarket competition as the proposed fee would be assessed to all issuers uniformly that require more than three Exchange Rule Filings in a given year or an Exchange Rule Filing Amendment.

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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-097 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2024-097. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CboeBZX-2024-097 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).