

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88778; File No. SR-CboeBZX-2020-034)

April 30, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of 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)

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 April 16, 2020, 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

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, 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 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

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).

that are not Generically-Listed ETPs⁷ and to add annual listing fees for ETPs listed on the Exchange.⁸ The Exchange then made certain additional modifications to Rule 14.13 in May 2019 related to listings that are transferring to the Exchange and to make certain changes to the fees associated with Linked Securities.^{9,10} Finally, on August 30, 2019, the Exchange amended Rule 14.13(b)(2) in order to create annual pricing cap for Outcome Strategy Series¹¹ that are listed on the Exchange.¹² Now, the Exchange submits this proposal in order to amend Rule 14.13(b)(1)(C)(i) to exclude generically-listed Exchange-Traded Fund Shares from entry fees.

By way of background, on April 6, 2020, the Exchange received approval by the Commission to generically list and trade Exchange-Traded Fund Shares that are permitted to operate in reliance of Rule 6c-11 (“Rule 6c-11”) under the Investment Company Act of 1940

⁷ As defined in Rule 14.13(b)(1)(C)(i), the term “Generically-Listed ETPs” means Index Fund Shares, Portfolio Depositary Receipts, Managed Fund Shares, Linked Securities, 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).

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 See Securities Exchange Act Release No. 85881 (May 16, 2019), 84 FR 23607 (May 22, 2019) (SR-CboeBZX-2019-042).

¹¹ As defined in Rule 14.13(b)(2)(C)(iv), an Outcome Strategy Series is a series of ETPs that are each designed to (i) a pre-defined set of returns; (ii) over a specified outcome period; (iii) based on the performance of the same underlying instrument; and (iv) each employ the same outcome strategy for achieving the predefined set of returns (each an “Outcome Strategy ETP” and, collectively, an “Outcome Strategy Series”).

¹² See Securities Exchange Act No. 86956 (September 12, 2019) 84 FR 49128 (September 18, 2019) (SR-CboeBZX-2019-081).

(the “1940 Act”).¹³ The Commission recently adopted Rule 6c-11 to permit exchange-traded funds (“ETFs”) that satisfy certain conditions to operate without obtaining an exemptive order from the Commission under the 1940 Act.¹⁴ Since the first ETF was approved by the Commission in 1992, the Commission has routinely granted exemptive orders permitting ETFs to operate under the 1940 Act because there was no ETF specific rule in place and they have characteristics that distinguish them from the types of structures contemplated and included in the 1940 Act. After such an extended period operating without a specific rule set and only under exemptive relief, Rule 6c-11 is designed to provide a consistent, transparent, and efficient regulatory framework for ETFs.¹⁵ Given this, the Exchange adopted Rule 14.11(l) to similarly promote consistency, transparency, and efficiency surrounding the exchange listing process for ETF Shares in a manner that is consistent with the Act.

Like Index Fund Shares and Managed Fund Shares listed under generic listing standards in Rules 14.11(c) and 14.11(i), respectively, series of Exchange-Traded Fund Shares that are permitted to operate in reliance on Rule 6c-11 are permitted to be listed and traded on the

¹³ 15 U.S.C. 80a-1.

¹⁴ See Release Nos. 33-10695; IC-33646; File No. S7-15-18 (Exchange-Traded Funds) (September 25, 2019), 84 FR 57162 (October 24, 2019) (the “Rule 6c-11 Release”).

¹⁵ In approving the rule, the Commission stated that the “rule will modernize the regulatory framework for ETFs to reflect our more than two decades of experience with these investment products. The rule is designed to further important Commission objectives, including establishing a consistent, transparent, and efficient regulatory framework for ETFs and facilitating greater competition and innovation among ETFs.” Rule 6c-11 Release, at 57163. The Commission also stated the following regarding the rule’s impact: “We believe rule 6c-11 will establish a regulatory framework that: (1) Reduces the expense and delay currently associated with forming and operating certain ETFs unable to rely on existing orders; and (2) creates a level playing field for ETFs that can rely on the rule. As such, the rule will enable increased product competition among certain ETF providers, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.” Rule 6c-11 Release, at 57204.

Exchange without a prior Commission approval order or notice of effectiveness pursuant to Section 19(b) of the Act.¹⁶ Given this, the Exchange proposes to include generically-listed Exchange-Traded Fund Shares in the list of Generically-Listed ETPs set forth in Rule 14.13(b)(1)(C)(i) that are excepted from entry fees. Specifically, where generically-listed Exchange-Traded Fund Shares do not require a proposed rule change pursuant to section 19(b) of the Exchange Act to be filed with the Commission prior to listing and trading on the Exchange, the Exchange proposes to exempt such Exchange-Traded Fund Shares from entry fees. Such treatment is consistent with the treatment of other ETPs (such as Index Fund Shares and Managed Fund Shares) that also generally do not require a proposed rule change pursuant to section 19(b) of the Exchange Act to be filed with the Commission prior to listing and trading on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),¹⁸ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its issuers. The Exchange also notes that its ETP listing business operates in

¹⁶ Rule 19b-4(e)(1) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (“SRO”) is not deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b-4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class. As noted in the Approval Order, Exchange Rule 14.11(l) establishes generic listing standards for ETFs that are permitted to operate in reliance on Rule 6c-11. An ETF listed under proposed Rule 14.11(l) would therefore not need a separate proposed rule change pursuant to Rule 19b-4 before it can be listed and traded on the Exchange.

¹⁷ 15 U.S.C. 78f.

¹⁸ 15 U.S.C. 78f(b)(4) and (5).

a highly-competitive market in which ETP issuers can readily transfer their listings if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. The proposed rule change reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors.

The Proposed Entry Fee Exemption is an Equitable Allocation of Fees

The Exchange believes the proposal is equitable because it is available to all issuers and applies equally to all generically-listed Exchange-Traded Fund Shares. The Exchange only recently amended its Rules to allow for the generic listing of Exchange-Traded Fund Shares. The Exchange believes that providing an exemption to entry fees for such ETPs is a reasonable and equitable approach as they do not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange.

The Exchange notes that the proposed entry fee exemption will only act to leave static or reduce fees for ETPs listed on the Exchange. Further, this proposal will decrease the fees associated with generically-listed Exchange-Traded Fund Shares on the Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Exchange-Traded Fund Shares, to the benefit of investors.

The Proposed Entry Fee Exemption is not Unfairly Discriminatory

The Exchange also believes that the proposed entry fee exemption for generically-listed Exchange-Traded Fund Shares is not unfairly discriminatory because it does not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange. As noted above, Exchange-Traded Funds only recently became available to list and trade generically on the Exchange. Other similar types

of ETPs (e.g., Managed Fund Shares and Index Fund Shares) that are listed on the Exchange generically are exempted from entry fees under Rule 14.13(b)(1)(C)(i) because they do not require a proposed rule change pursuant to Section 19(b) of the Exchange Act to be filed with the Commission in order to list and trade on the Exchange. As such, the Exchange believes it is not unfairly discriminatory of the Exchange to similarly exempt generically-listed Exchange-Traded Fund Shares from such entry fees.

The Exchange notes that the proposed entry fee exemption will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal will decrease the fees associated with generically listing Exchange-Traded Fund Shares, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Exchange-Traded Fund Shares, also to the benefit of investors.

The Proposed Entry Fee Exemption is Reasonable

The Exchange believes that the proposed entry fee exemption for generically-listed Exchange-Traded Fund Shares is a reasonable means to incentivize issuers to list (or transfer) such Exchange-Traded Fund Shares on the Exchange. 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 designed to incentivize issuers to list new products and transfer existing products to the Exchange, 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 change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX as a listing venue by providing better pricing for generically-listed Exchange-Traded Fund Shares. 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. This proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change represents a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange, which the Exchange believes will enhance competition both among ETP issuers and listing venues, to the benefit of investors. The Exchange believes that such proposed changes will directly enhance competition among ETP listing venues by reducing the costs associated with listing on the Exchange for generically-listed Exchange-Traded Fund Shares. Similarly, the Exchange believes that exempting entry fees on such ETPs will enhance competition both among listing venues of Exchange-Traded Fund Shares and among issuers through an overall reduction of 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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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 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-2020-034 on the subject line.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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-2020-034. 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-2020-034 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).