



8011-01P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84377; File No. SR-CboeBZX-2018-047]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment Nos. 2 and 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 4, to Amend BZX Rule 14.8, General Listings Requirements – Tier I, to Adopt Listing Standards for Closed-End Funds

October 5, 2018

I. Introduction

On June 21, 2018, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) 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 amend BZX Rule 14.8, General Listings Requirements – Tier I, to adopt listing standards for Closed-End Funds. The proposed rule change was published for comment in the Federal Register on July 11, 2018.³ On August 24, 2018, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On August 28, 2018, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed.

On September 24, 2018, the Exchange filed Amendment No. 2 to the proposed rule change,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 83596 (July 5, 2018), 83 FR 32162.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 83938, 83 FR 44403 (August 30, 2018). The Commission designated October 9, 2018 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

which amended and replaced the proposed rule change, as modified by Amendment No. 1.⁶ On October 3, 2018, the Exchange filed and withdrew Amendment No. 3 to the proposed rule change and filed Amendment No. 4 to the proposed rule change.⁷ The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 4 from interested persons, and is approving the proposed rule change, as modified by Amendment Nos. 2 and 4, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment Nos. 2 and 4⁸

The Exchange proposes to amend BZX Rule 14.8⁹ to adopt listing standards for Closed-End Funds,¹⁰ which are based on existing listing standards applicable to closed-end funds listed on NYSE American.¹¹

⁶ In Amendment No. 2, the Exchange: (i) noted that the proposed quantitative listing standards differ from the listing standards for closed-end funds on NYSE American LLC (“NYSE American”) in two ways and described those differences; (ii) reorganized the proposed definitions of “Public Distribution” and “Public Shareholders;” (iii) specified the meaning of “market value” for purposes of Closed-End Funds (as defined herein); (iv) amended the proposed Market Maker requirement; (v) proposed additional continued listing standards; (vi) modified the proposed trading hours for Closed-End Funds; (vii) noted that BZX Rule 14.6 also provides certain conditions under which the Exchange will halt trading in a Closed-End Fund; (viii) represented that Closed-End Funds will be subject to the Exchange’s surveillance procedures for ETPs and other equity securities traded on the Exchange; (ix) represented that the governance requirements for Closed-End Funds would be substantially similar to those applicable to closed-end funds on the Nasdaq Stock Market LLC (“Nasdaq”); and (x) made technical and conforming changes. Amendment No. 2 is available at: <https://www.sec.gov/comments/sr-cboebzx-2018-047/srcboebzx2018047-4447313-175711.pdf>.

⁷ In Amendment No. 4, the Exchange corrected two typographical errors from Amendment No. 2. Amendment No. 4 is available at: <https://www.sec.gov/comments/sr-cboebzx-2018-047/srcboebzx2018047-4474562-175863.pdf>.

⁸ For a full description of the proposal, see Amendment No. 2, supra note 6 and Amendment No. 4, supra note 7.

⁹ Specifically, the Exchange proposes to add new paragraphs (e) and (i) under BZX Rule 14.8 related to the initial and continued listing standards, respectively, for Closed-End Funds. The Exchange also proposes to renumber certain existing paragraphs in BZX Rule 14.8 in order to accommodate these new paragraphs.

For initial listing, a Closed-End Fund must meet the requirements for either an individual Closed-End Fund (“Individual CEF Standard”) or a Group¹² of Closed-End Funds (“Group CEF Standard”). The Individual CEF Standard requires:

- (i) A Public Distribution¹³ of: (a) at least 500,000 shares where there are at least 800 Public Shareholders,¹⁴ except that companies that are not banks whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, are normally not considered eligible for

¹⁰ As proposed in BZX Rule 14.8(a), the term “Closed-End Funds” means closed-end management investment companies registered under the Investment Company Act of 1940.

¹¹ The Exchange notes that the proposed quantitative listing standards are substantively identical to the listing standards applicable to closed-end funds on NYSE American (“NYSE American CEF Rules”), with two exceptions. Specifically, the proposed quantitative listing standards are substantively identical to Sections 101(g), 102(a), and 1003(b)(i) and (v) in the NYSE American Company Guide. In addition, the Exchange proposes to require that a Closed-End Fund has a minimum of four registered and active Market Makers, and that a Closed-End Fund has a minimum bid price of at least \$4 per share initially and at least \$1 per share on an ongoing basis. These additional requirements are consistent with the Exchange’s listing standards for corporate securities under current BZX Rules 14.8(b)(1)(A), 14.8(e)(1)(A), 14.8(b)(2)(C)(iii), and 14.8(e)(2)(B)(iv).

¹² As defined in proposed BZX Rule 14.8(e)(2)(B), a “Group” is a group of Closed-End Funds which are or will be listed on the Exchange, and which are managed by a common investment adviser or investment advisers who are “affiliated persons” as defined in Section 2(a)(3) of the Investment Company Act of 1940 as amended.

¹³ As defined in proposed BZX Rule 14.8(e)(1)(B), the term “Public Distribution” means the public distribution including only Public Shareholders.

¹⁴ As defined in proposed BZX Rule 14.8(e)(1)(A), the term “Public Shareholders” includes both shareholders of record and beneficial holders, but is exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated (i.e., 10% or greater), affiliated or family holdings.

- listing unless the Public Distribution appreciably exceeds 500,000 shares;¹⁵ or (b) at least 1,000,000 shares where there are at least 400 Public Shareholders;
- (ii) A Public Distribution with a market value¹⁶ or net assets of at least \$20 million;
 - (iii) Minimum bid price of at least \$4 per share; and
 - (iv) At least four registered and active Market Makers.¹⁷

The Group CEF Standard requires:

- (i) The Group has a Public Distribution with a market value or net assets of at least \$75 million;
- (ii) The Closed-End Funds in the Group have a Public Distribution with an average market value or average net assets of at least \$15 million;
- (iii) Each Closed-End Fund in the Group has a Public Distribution with a market value or net assets of at least \$10 million; and
- (iv) Each Closed-End Fund in the Group has:
 - (a) A Public Distribution of: (1) at least 500,000 shares where there are at least 800 Public Shareholders, except that companies that are not banks whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, are normally not considered eligible for listing unless the Public Distribution

¹⁵ As proposed, where the Public Distribution appreciably exceeds 500,000 shares for companies that are not banks whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, the 800 Public Shareholders requirement would also apply.

¹⁶ For purposes of Closed-End Funds, the term “market value” means the official closing price multiplied by the unit of count.

¹⁷ See proposed BZX Rule 14.8(e)(2)(A).

appreciably exceeds 500,000 shares;¹⁸ or (2) at least 1,000,000 shares where there are at least 400 Public Shareholders;

- (b) Minimum bid price of at least \$4 per share; and
- (c) At least four registered and active Market Makers.¹⁹

The Exchange will consider the suspension of trading in and will initiate delisting proceedings (and such Closed-End Fund will not be eligible to follow the cure procedures outlined in BZX Rule 14.12) for a Closed-End Fund where:

- (i) The market value of the Public Distribution and net assets each are less than \$5 million for more than 60 consecutive days;
- (ii) The Closed-End Fund no longer qualifies as a closed-end fund under the Investment Company Act of 1940 (unless the resultant entity otherwise qualifies for listing);
- (iii) The Public Distribution is less than 200,000;
- (iv) The total number of Public Shareholders is less than 300;
- (v) The Public Distribution has a market value of less than \$1 million for more than 90 consecutive days;
- (vi) The bid price is less than \$1 per share; or
- (vii) There are fewer than four registered and active Market Makers.²⁰

Closed-End Funds listed on the Exchange will be subject to the governance requirements in BZX Rule 14.10 applicable to all management investment companies listed on the Exchange, except as provided in the exceptions to certain governance requirements for management

¹⁸ See supra note 15.

¹⁹ See proposed BZX Rule 14.8(e)(2)(B).

²⁰ See proposed BZX Rule 14.8(i).

investment companies under BZX Rule 14.10(e)(1)(E) and Interpretation and Policy .13 of BZX Rule 14.10. The Exchange notes that the governance requirements for Closed-End Funds are substantially similar to those applicable to closed-end funds listed on Nasdaq.²¹

Closed-End Funds will be subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in Closed-End Funds from 8:00 a.m. until 8:00 p.m. Eastern Time²² and the Exchange represents that it has appropriate rules to facilitate such transactions during all trading sessions. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in a Closed-End Fund. The Exchange will halt trading in a Closed-End Fund under the conditions specified in BZX Rule 11.18 (Trading Halts Due to Extraordinary Market Volatility). BZX Rule 14.6 (Obligations for Companies Listed on the Exchange) also provides certain conditions under which the Exchange will halt trading in a Closed-End Fund. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the shares inadvisable. These include whether unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading of Closed-End Funds on the Exchange will be subject to the Exchange's surveillance procedures for ETPs and other equity securities traded on the Exchange. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Closed-End Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

²¹ See Nasdaq Rule 5600 series.

²² The Exchange notes that this includes three trading sessions on the Exchange: the Pre-Opening Session from 8:00 a.m. to 9:30 a.m. Eastern Time; Regular Trading Hours from 9:30 a.m. to 4:00 p.m. Eastern Time; and the After Hours Trading Session from 4:00 p.m. to 8:00 p.m. Eastern Time.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 4, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁴ which requires, among other things, that the rules of a national securities 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, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission notes that the proposed initial and continued listing standards for Closed-End Funds under BZX Rule 14.8 are substantively identical to the listing standards for closed-end funds currently utilized by NYSE American, with the exceptions of two additional requirements proposed by the Exchange.²⁵ The Commission also notes that the Exchange's governance requirements that will be applicable to Closed-End Funds are substantially similar to

²³ 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).

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ As discussed above, in addition to the listing standards for closed-end funds currently utilized by NYSE American, the Exchange would require that a Closed-End Fund has a minimum of four registered and active Market Makers, and that a Closed-End Fund has a minimum bid price of at least \$4 per share initially and at least \$1 per share on an ongoing basis. These two additional requirements are consistent with the Exchange's listing standards for corporate securities. See supra note 11.

those applicable to closed-end funds listed on Nasdaq.²⁶ As discussed above, Closed-End Funds will be subject to the Exchange's existing rules governing the trading of equity securities, and the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Closed-End Funds on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

Based on the foregoing, the Commission believes that the proposal presents no novel regulatory issues and finds the proposal to be consistent with the Act.

IV. Solicitation of Comments on Amendment Nos. 2 and 4 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment Nos. 2 and 4 are 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-2018-047 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-2018-047. 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

²⁶ See supra note 21.

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 such filing will also 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-2018-047 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment Nos. 2 and 4

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 4, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 4 in the Federal Register. The Commission notes that Amendment No. 2 enhanced consistency between the Exchange's proposed listing standards and the existing listing standards for closed-end funds on other exchanges, as well as the existing listing standards for corporate securities on the Exchange. Amendment No. 2 also provided additional description of the proposed listing standards, trading rules, and surveillance procedures, and made technical and conforming changes. The changes in Amendment No. 2 assisted the Commission in finding that the proposal is consistent with the Act. The Commission

notes that Amendment No. 4 only corrected two typographical errors. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁷ to approve the proposed rule change, as modified by Amendment Nos. 2 and 4, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-CboeBZX-2018-047), as modified by Amendment Nos. 2 and 4, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

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Assistant Secretary

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ Id.

²⁹ 17 CFR 200.30-3(a)(12).

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