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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86956; File No. SR-CboeBZX-2019-081]

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, as Set Forth in BZX Rule 14.13, Company Listing Fees

September 12, 2019.

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 August 30, 2019, 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

The Exchange proposes a 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. Changes to the fee schedule pursuant to this proposal are effective upon filing.

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 that are not Generically-Listed ETPs⁷ and to add annual listing fees for ETPs listed on the

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).

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)

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} The Exchange submits this proposal in order to amend Rule 14.13(b)(2) in order to create annual pricing cap for Outcome Strategy Series, as defined below, that are listed on the Exchange. As part of this proposal to create a fee cap for Outcome Strategy Series, the Exchange is also proposing to make a corresponding numbering change to make current Rule 14.13(b)(2)(iv) become Rule 14.13(b)(2)(v) and to add language to proposed Rule 14.13(b)(2)(v) in order to make clear that ETPs that are subject to the new pricing for Outcome Strategy Series would not be subject to the fees applicable under Rule 14.13(b)(2)(v) in the same way that Legacy Listings, Auction Fee Listings, and Transfer Listings are not subject to such fees.

Currently, all ETPs listed on the Exchange are subject to annual fees applicable under Rule 14.13(b)(2)(C)(i)-(iv). Newly listed ETPs receive reduced and prorated annual rates,¹¹

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 Pursuant to Rule 14.13(b)(2)(C)(ii), where an ETP first lists on the Exchange or has been listed for fewer than three calendar months on the ETP’s first trading day of the year (a “New Listing”), such ETP will have an annual listing fee of \$4,500. Upon initial listing on the Exchange, the annual listing fee applicable to New Listings will be prorated based on the number of trading days remaining in the calendar year, except that Transfer Listings will not be subject to an Annual Fee for the remainder of the calendar year following the date of listing on the Exchange.

certain other listings receive reduced rates,¹² others receive a waiver of annual fees based on the auction volume of an issuer's ETPs listed on the Exchange,¹³ and all other ETPs are subject to pricing based on the consolidated average daily volume of the ETP in the fourth quarter of the preceding calendar year. As noted above, the Exchange is proposing to create a cap on annual fees where an issuer lists a series of ETPs that are each designed to provide (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 pre-defined set of returns (each an "Outcome Strategy ETP" and, collectively, an "Outcome Strategy Series"). The Exchange is proposing that such annual fees will be capped at \$16,000 per year.

Outcome Strategy ETPs

The Exchange currently lists a total of 18 Outcome Strategy ETPs from 3 separate Outcome Strategy Series. Outcome Strategy ETPs are ETPs that are designed to provide a particular set of returns over a specified outcome period based on the performance of an underlying instrument during the ETP's outcome period.¹⁴ As an example, an Outcome Strategy ETP would include an ETP that employs the following strategy (the "Buffer Strategy"): the ETP seeks to provide investment returns that match the gains of a particular index (the "Reference Index") up to a maximized annual return (the "Cap Level") (for the example below, 10%) while

¹² Pursuant to Rule 14.13(b)(2)(C)(i), where an ETP was listed on the Exchange prior to January 1, 2019 (a "Legacy Listing") or is a Transfer Listing, such ETP will have an annual listing fee of \$4,000.

¹³ Pursuant to Rule 14.13(b)(2)(C)(iii), where the average daily auction volume combined between the opening and closing auctions on the Exchange across all of an issuer's ETPs listed on the Exchange exceeds 500,000 shares (an "Auction Fee Listing"), there is no annual listing fee for any of the issuer's ETPs listed on the Exchange.

¹⁴ The Exchange notes that the Commission has approved the listing and trading of up to 36 Outcome Strategy ETPs on the Exchange. See Securities Exchange Act Release No. 83679 (July 26, 2018), 83 FR 35505 (July 26, 2018) (SR-BatsBZX-2017-72).

guarding against certain declines in that same underlying index (the “Buffer Level”) (for the example below, 15%) over a particular period of time (the “Outcome Period”) (for the example below, July 1st through June 30th). If over the course of the one-year Outcome Period from July 1st to June 30th, the Reference Index increases in value, the ETP would appreciate by approximately the same amount, up to the 10% Cap Level. If over the course of the Outcome Period, the Reference Index decreases in value by an amount equal to or less than the 15% Buffer Level, then the ETP would provide an approximate total return of zero. If over the course of the Outcome Period, the Reference Index decreases in value by an amount greater than the 15% Buffer Level, then the ETP would decrease in value by approximately the same percentage as the Reference Index, minus the 15% Buffer Level (if the Reference Index decreased by 20%, subtract the 15% Buffer Level, so the ETP would decrease by approximately 5%). Such outcomes would only apply for the Outcome Period from July 1st through June 30th and the ETP would reset at the end of the Outcome Period in order to employ the same Buffer Strategy for the following Outcome Period.¹⁵

As such, the Outcome Period applicable to each ETP is particularly important and investors need to have more granular Outcome Periods in order to ensure that they are able to achieve the full Cap Level upside and Buffer Level downside protection. Issuers of Outcome Strategy ETPs generally issue the products in at least quarterly versions of each strategy. In the example above, which referred only to the July 1st to June 30th Outcome Period, an issuer would likely also want to list ETPs employing the Buffer Strategy with at least quarterly Outcome

¹⁵ The Exchange notes that the Cap Levels, Buffer Levels, and the duration of each Outcome Period will vary across Outcome Strategy Series, but that the concepts of providing exposure to a particular reference instrument with an upside cap and limited downside over a particular period of time generally define Outcome Strategy ETPs.

Periods, which would include October 1st through September 30th, January 1st through December 31st, and April 1st through March 31st. The issuer may also elect to list ETPs employing the Buffer Strategy in order to provide monthly Outcome Periods, meaning that there would be twelve separate ETPs listed on the Exchange that each employ the same Buffer Strategy, but have different Outcome Periods. Again, this provide [sic] investors with more precision when deciding which Outcome Strategy ETP to purchase among the Outcome Strategy Series.

With this in mind, the Exchange is proposing to cap the maximum listing fee per year for an Outcome Strategy Series at \$16,000. Using the example above, if the issuer listed ETPs employing the Buffer Strategy with quarterly Outcome Periods, the annual fee on a per ETP basis would be \$4,000. If the issuer chose to list ETPs with monthly Outcome Periods, the annual fee on a per ETP basis would be \$1,333.33. Assuming that each of these ETPs would otherwise be subject to the Exchange's maximum annual listing fee of \$7,000, the reduction in annual listing fees on a per ETP basis would be \$3,000 and \$5,666.67, respectively.

Implementation Date

The Exchange proposes to implement these amendments upon filing.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),¹⁷ 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 a highly-competitive market in which ETP issuers can readily transfer their listings if they deem

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

fee levels or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect 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 Fee Cap is an Equitable Allocation of Fees

The Exchange believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is equitable because it is available to all issuers and applies equally to all Outcome Strategy Series. Outcome Strategy ETPs are unique and are a recent innovation in the ETP space. The Exchange believes that providing a fee cap for such ETPs is a more reasonable and equitable approach than the current fee structure based on the unique features that create the need to offer multiple ETPs based on the same strategy.

The Exchange notes that the proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. Further, this proposal will decrease the fees associated with listing ETPs with multiple Outcome Periods on the Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Outcome Strategy ETPs, to the benefit of investors.

The Proposed Fee Cap is not Unfairly Discriminatory

The Exchange also believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is not unfairly discriminatory because, while it only applies to Outcome Strategy ETPs, it represents a significantly improved approach to annual listing fees for ETPs that by their nature require multiple listings. As noted above, Outcome Strategy ETPs are a recent innovation and warrant revisiting the ETP listing pricing model. Listing numerous ETPs with different Outcome Periods allows investors the opportunity to choose the Outcome Strategy

ETP with the most appropriate Outcome Period for their investment purposes. Providing a cap on annual listing fees for such ETPs will ensure that listing fees will not be the basis for such additional Outcome Periods not being available to investors. The Exchange also notes that the incremental ongoing regulatory burden associated with listing an additional Outcome Strategy ETP is reduced as compared to the incremental regulatory burden associated with listing additional non-Outcome Strategy ETPs. Specifically, each Outcome Strategy ETP in an Outcome Strategy Series is based on the same reference instrument, utilizes the same investment strategy, has nearly identical holdings to the other Outcome Strategy ETPs in the Outcome Strategy Series, and, to the extent that such Outcome Strategy ETPs are listed pursuant to an exchange rule filing, subject to the same continued listing obligations related to permissible holdings and portfolio limitations. As such, any testing, monitoring, or surveillance for compliance with continued listing standards and obligations applicable to a particular Outcome Strategy ETP will be nearly identical across the entirety of the Outcome Strategy Series, allowing the Exchange's regulatory personnel to leverage the same processes across each Outcome Strategy ETP, which substantially reduces the regulatory burden applicable for each Outcome Strategy ETP. Accordingly, the Exchange believes that the proposed cap on listing fees on Outcome Strategy ETPs is not unfairly discriminatory due to their unique operation.

Further, the Exchange notes that an issuer will only receive the benefit of the annual fee cap if they accrue greater than \$16,000 in listing fees for a particular Outcome Strategy Series. The Exchange notes that the proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal will decrease the fees associated with listing ETPs with monthly Outcome Periods on the

Exchange, which will reduce the barriers to entry into the space and incentivize enhanced competition among issuers of Outcome Strategy ETPs, also to the benefit of investors.

The Proposed Fee Cap is Reasonable

The Exchange believes that the proposed cap on fees for Outcome Strategy Series and the associated changes is a reasonable means to incentivize issuers to list (or transfer) Outcome Strategy ETPs 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 frequently¹⁸ for numerous reasons, including listing fees. The proposed rule changes reflect 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 this proposal represents a significantly improved approach to annual listing fees for ETPs that by their nature require multiple listings. The proposed fee structure is a cap on fees for Outcome Strategy Series and will only act to leave static or reduce fees for ETPs listed on the Exchange. This proposal is intended to help the Exchange compete as an ETP listing venue.

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. The

¹⁸ For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. See <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf>.

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 Outcome Strategy Series. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently¹⁹ 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 Outcome Strategy ETPs. Similarly, the Exchange believes that reducing [sic] putting a cap on such ETPs will enhance competition both among listing venues of Outcome Strategy ETPs and among issuers and issuances of Outcome Strategy ETPs through an overall reduction of annual 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.

¹⁹ For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf>.

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 Act²⁰ and paragraph (f) of Rule 19b-4²¹ 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-2019-081 on the subject line.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 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-2019-081. 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-2019-081 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.²²

Jill M. Peterson,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).

