



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98015; File No. SR-CboeBZX-2023-055]

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

July 28, 2023.

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 July 27, 2023, 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. (“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 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 January 1, 2019, the Exchange amended Rule 14.13 in order to charge an entry fee for ETPs that are not “Generically-Listed ETPs”.^{6 7} Now, the Exchange proposes to amend its listing fees to provide that the entry fee provided in Rule 14.13(b)(1)(C)(i) will be charged for non-Generically Listed ETPs for each proposed rule change pursuant to Section 19(b) of the Exchange Act (“Exchange Rule Filing”).

Currently, Exchange Rule 14.13(b)(1)(C) provides that a Company that submits an application to list any ETP shall be required to pay an entry fee to the Exchange as follows:

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 “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)(C)(i).

⁷ See Securities Exchange Act No. 83597 (July 5, 2018) 83 FR 32164 (July 11, 2018) (SR-CboeBZX-2018-046) (the “Original Entry Fee Filing”).

- (i) All ETPs, with the exception of Generically-Listed ETPs, shall pay an entry fee of \$7,500. Each issuer will be subject to an aggregate maximum entry fee of \$22,500 per calendar year.
- (ii) There is no entry fee for Generically-Listed ETPs or ETPs that transfer their listing from another national securities exchange to the Exchange (a “Transfer Listing”).

As such, a \$7,500 fee applies to each ETP per application rather than per Exchange Rule Filing. The Exchange now proposes to amend and restructure Exchange Rule 14.13(b)(1)(C)(i) to provide that all ETPs that are not Generically-Listed will be charged the fee for each Exchange Rule Filing unless it is in furtherance of the same continuous effort. Rule 14.13(b)(1)(C)(i) would be modified to define the term “Exchange Rule Filing” and clarify that the entry fee is applied on a per ETP basis. Accordingly, proposed Rule 14.13(b)(1)(C)(i) would state that 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 an Exchange Rule Filing is not required to be filed with the Commission (collectively, “Generically-Listed ETPs”), shall pay an entry fee of \$7,500 per ETP.

The Exchange notes that the amended entry fee would continue to be subject to the maximum entry fee of \$22,500 per calendar year per issuer as currently provided in Rule 14.13(b)(1)(C)(i), however the Exchange proposes to move such provision to proposed Rule 14.13(b)(1)(C)(i)(b). The Exchange also proposes to adopt new Rule 14.13(b)(1)(C)(i)(a), which would state that the Exchange will charge for each Exchange Rule Filing per ETP unless it is in furtherance of the same continuous effort. An Exchange Rule Filing is considered in furtherance of the same continuous effort if: the Exchange Rule Filing is required for ministerial purposes related to another previously filed Exchange Rule Filing, or if the Exchange Rule Filing is withdrawn and refiled within 30 calendar days.

As discussed in the Original Entry Fee Filing, ETPs that require an Exchange Rule Filing require significant additional time and extensive legal and business resources by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings. The proposed fee would be used to address such costs for each Exchange Rule Filing. Therefore, the Exchange is only proposing to assess the entry fee for additional Exchange Rule Filings that are not filed in furtherance of the same continuous effort. For example, the Exchange would not assess an additional entry fee to an ETP in the event that an Exchange Rule Filing was submitted to the Commission and shortly thereafter withdrawn and resubmitted. Similarly, the Exchange would not assess an additional entry fee to an ETP in the event that an Exchange Rule Filing was submitted to the Commission, rejected by the Commission, and shortly thereafter resubmitted. Instances where Exchange Rule Filings are either rejected or withdrawn and refiled shortly thereafter often involve minor or ministerial errors that are in furtherance of the same continuous effort.

Further, the Exchange would not charge an entry fee to an ETP with an Exchange Rule Filing that is withdrawn and shortly thereafter refiled in order to restart the regulatory review period. Specifically, if an Exchange Rule Filing is nearing the end of its regulatory review period but has not met the regulatory burden to be approved by the Commission, the Exchange may withdraw and resubmit the Exchange Rule Filing, which would restart the regulatory review period, rather than receive a disapproval. As the Exchange would withdraw and refile the Exchange Rule Filing within 30 calendar days, the Exchange would consider the subsequent filing to be submitted in furtherance of the same continuous effort.

The Exchange would assess an entry fee to an ETP with an Exchange Rule Filing in all other circumstances. For example, the refile of an Exchange Rule Filing that has previously been disapproved by the Commission requires updated analysis to address the Commission's basis for disapproval. The Exchange would not consider this new analysis in furtherance of the same continuous effort, and therefore would apply the entry fee to such Exchange Rule Filing.

Another example would be the refiling of an Exchange Rule Filing that has been withdrawn, but not refiled within 30 calendar days. The Exchange would not consider such refiling in furtherance of the same continuous effort due to the time lapse and necessary updates required before refiling the Exchange Rule Filing.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that proposed Rule 14.13(b)(1)(C)(i), which provides that that all ETPs that are not Generically-Listed will be charged the entry fee for each Exchange Rule Filing, is a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and other charges because it would apply equally to all firms. The Exchange believes that charging such an entry fee for each Exchange Rule Filing unless it is in furtherance of the same continuous effort is reasonable given the additional resources required by the Exchange in preparing each Exchange Rule Filing for an ETP. Specifically, each Exchange Rule Filing requires significant additional time and extensive legal and business resources by Exchange staff to prepare and review such filings and to communicate with issuers and the Commission regarding such filings.

The Exchange believes that an Exchange Rule Filing that is withdrawn and refiled within 30 calendar days can be assumed to be in furtherance of the same continuous effort. Specifically, if an Exchange Rule Filing is nearing the end of its regulatory review period but has not met the regulatory burden to be approved by the Commission, the Exchange may withdraw and resubmit

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4) and (5).

the Exchange Rule Filing, which would restart the regulatory review period, rather than receive a disapproval. As the Exchange would withdraw and refile the Exchange Rule Filing within 30 calendar days, the Exchange would consider the subsequent filing to be submitted in furtherance of the same continuous effort because such a submission would generally not require the same significant additional time and extensive legal and business resources associated with other Exchange Rule Filings.

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 change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed fee will burden competition, but instead, enhance competition, as it is intended to address the costs associated with preparing each Exchange Rule Filing. As such, the proposal is a competitive proposal designed to enhance pricing competition among listing venues and implement pricing that better reflects expenses 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 for each Exchange Rule Filing.

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)(ii) of the Act,¹⁰ and Rule 19b-4(f)(2)¹¹ 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 shall institute proceedings to determine whether the proposed rule 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-055 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-2023-055. 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>).

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 240.19b-4(f)(2).

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-2023-055 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.¹²

Sherry R. Haywood,

Assistant Secretary.

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¹² 17 CFR 200.30-3(a)(12).