



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98991; File No. SR-CboeBZX-2023-092]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delineate the Application Fee from the Entry Fee, to Increase the Application Fee for Tier I and Tier II Securities Listed on the Exchange in Certain Circumstances, to Change the Assessment Date of the Entry Fee, and to Clarify that Both the Entry Fee and Application Fee are Non-Refundable as Provided in Exchange Rule 14.13**

November 20, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 8, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III 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 delineate the Application Fee from the Entry Fee, to increase the Application Fee for Tier I and Tier II securities listed on the Exchange in certain circumstances, to change the assessment date of the Entry Fee, and to clarify that both the Entry Fee and Application Fee are non-refundable as provided in Exchange Rule 14.13. The text of the proposed rule change is provided in Exhibit 5.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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/](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.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules related to an application to list any class of securities (not otherwise identified in Rule 14.13) on the Exchange as a Tier I or Tier II security to specifically delineate the Application Fee<sup>3</sup> from the Entry Fee,<sup>4</sup> to increase the Application Fee for Tier I and Tier II Securities applying to list on the Exchange in certain circumstances, and to change the assessment date of the Entry Fee.<sup>5</sup> The Exchange is also proposing to clarify that both the Entry Fee and Application Fee are non-refundable. The Exchange is not proposing to change the total combined Entry Fee and Application Fee for either Tier I (\$100,000) or Tier II (\$50,000) securities, but rather to increase the Application Fee in situations that it's less likely

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<sup>3</sup> See proposed Rule 14.13(b)(1).

<sup>4</sup> The Entry Fee is currently set forth in Exchange Rule 14.13(b)(1)(A) and (B) for Tier I and Tier II securities, respectively. As described therein, the Entry Fee includes a non-refundable Application Fee that must be submitted with the Company's application to list on the Exchange.

<sup>5</sup> The Exchange initially filed the proposed fee change on September 29, 2023 (SR-CboeBZX-2023-077). On October 10, 2023, the Exchange withdrew that filing and submitted another proposed fee change (SR-CboeBZX-2023-082). On October 20, 2023, the Exchange withdrew that filing and submitted another proposed fee change (SR-CboeBZX-2023-086). On October 31, 2023, the Exchange withdrew that filing and [sic] another proposed fee change (SR-CboeBZX-2023-088). On November 8, 2023, the Exchange withdrew that filing and submitted this proposal.

that an applicant will list on the Exchange (as further described below) and to assess the Entry Fee at the point that the Exchange has completed the majority of the work associated with a potential listing.<sup>6</sup>

Currently, under Exchange Rule 14.13(b)(1)(A) and (B), a Company that submits an application to list a Tier I or Tier II security on the Exchange is assessed an Entry Fee totaling \$100,000 or \$50,000, respectively. The rules further stipulate that the Entry Fee will be assessed on the date of listing on the Exchange, except for \$25,000 which represents the Application Fee, and which must be submitted with the Company's application.

The Exchange is now proposing to delineate the Application Fee from the Entry Fee under proposed Rules 14.13(b)(1) and (2), respectively. However, the Exchange is not proposing a change to the combined total of the Entry Fee and Application Fee for either Tier I or Tier II securities that list on the Exchange. The Application Fee would continue to be \$25,000 for both Tier I and Tier II securities unless the Company is at any point during the Exchange's review of the application simultaneously engaged in the application process to list on another national securities exchange, in which case the application fee will be \$50,000. In such circumstances, there is a higher likelihood that the Company may withdraw its application to list on the Exchange prior to the issuance of conditional approval, and thus prior to assessment of the remainder of the Entry Fee. Given this and because of the significant resources necessary to review an application to list on the Exchange, the Exchange believes that a higher Application Fee will more closely align with the time at which the Exchange incurs the cost of reviewing an application and will ensure that the Exchange is compensated for its time and resources even if an issuer withdraws its application prior to receiving conditional approval.

The Exchange's listing application for Tier I or Tier II securities requires a Company to disclose whether it is simultaneously engaged in the application process to list on another

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<sup>6</sup> The Exchange notes that the proposed Fees will be applied prospectively to all applications submitted after the date of this proposal.

national securities exchange. If a Company were to indicate such, it would be assessed the \$50,000 Application Fee at the time of application. If a Company is not simultaneously engaged in the application process to list on another national securities exchange at the time of application, but later submits such an application prior to receiving conditional approval to list on the Exchange, the Company would be required to notify the Exchange of such application and the additional \$25,000 Application Fee would be assessed at that time. The Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of filing an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, the Exchange believes this proposal is not imposing any meaningful burden on competition. Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely that the full Entry Fee will be paid.

Based on the above proposed changes to Rule 14.13(b), the Exchange also proposes to renumber and update rule references throughout Rule 14.13(b) to conform to those changes. Additionally, the Exchange proposes to make conforming changes to proposed Rules 14.13(b)(2)(F) and (G) to state that neither the Entry Fee or Application Fee provided under proposed Rules 14.13(b)(1) and (2) will be applicable to certain securities.

The Exchange is also proposing that the Entry Fee be assessed for both Tier I and Tier II securities on the date the Exchange provides conditional approval<sup>7</sup> of the Company's application.

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<sup>7</sup> Conditional approval is approval issued by the Exchange for a security to list on the Exchange subject to certain conditions being met.

The Exchange’s review of an application for listing a Tier I or Tier II security requires significant Exchange resources, a majority of which are required prior to the issuance of conditional approval. Therefore, the Exchange believes the proposal to assess the Entry Fee (less the Application Fee) at the time conditional approval is issued is reasonable as it more closely aligns with the time that the largest costs are incurred by the Exchange. Further, it ensures that the Exchange is compensated for its time and resources even if an issuer determines not to list with the Exchange after receiving conditional approval.

Last, the Exchange proposes to delete the text of existing Rule 14.13(b)(1)(E), which provides that if the application is withdrawn or is not approved, the Entry Fee (less the non-refundable Application Fee) shall be refunded. As noted in current Exchange Rule 14.13(a), the Application Fee is, and will continue to be, non-refundable. While Rule 14.13(b)(1)(E) implies that an Entry Fee (less the Application Fee) may be refundable, it would not occur in practice as the Entry Fee is currently charged on the date of initial listing. Therefore, the Exchange proposes to delete the text of Rule 14.13(b)(1)(E) and to modify Rule 14.13(a) to clarify that both the Application Fee and Entry Fee are non-refundable.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</sup> requirements that the rules of an 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

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<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> 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)<sup>11</sup> 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 first notes that its corporate listing business operates in a highly-competitive market in which Companies can readily list on another national securities exchange if they deem fee levels or any other factor at a particular venue to be insufficient or excessive. Exchange Rule 14.13 reflects a competitive pricing structure designed to incentivize Companies to list new Tier I or Tier II securities, which the Exchange believes will enhance competition both among Companies and listing venues, to the benefit of investors.

The Exchange believes it is reasonable to delineate between the Application Fee and Entry Fee within the Exchange's rules. The separation of the two fees will clarify when each of the fees are assessed by the Exchange and the total amount that will be assessed. Furthermore, the Exchange believes the corresponding changes throughout Rule 14.13(b) to modify rule references and numbering will maintain a clear and understandable rulebook, to the benefit of all investors.

The Exchange believes its proposal to charge a higher Application Fee if the Company is at any point during the Exchange's review of the application simultaneously engaged in the application process to list on another national securities exchange, is reasonable. Specifically, in such circumstances, there is a higher likelihood that the Company will withdraw its application to list prior to the issuance of conditional approval, and thus prior to assessment of Entry Fee (less the Application Fee). Given this and because of the significant resources necessary to

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<sup>10</sup> Id.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

review an application to list on the Exchange, the Exchange believes that a higher Application Fee will more closely align with the time at which the Exchange incurs the cost of reviewing an application and will ensure that the Exchange is compensated for its time and resources even if an issuer withdraws its application prior to receiving conditional approval. The Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of submitting an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, the Exchange believes this proposal is not imposing any meaningful burden on competition. Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely for the full Entry Fee to be paid. While such an arrangement could result in Companies that do not list with the Exchange paying a higher Application Fee, the Exchange does not believe the proposal will disincentivize Companies to submit applications to list on other national securities exchanges and thereby burden competition. Rather, the Exchange believes the proposal will reasonably compensate the Exchange for its review of the application and may incentivize Companies to choose not to engage in or terminate the application process on the Exchange when there is a higher likelihood that the Company will list on another national securities exchange.

While the Exchange is only proposing to charge a higher Application Fee in certain circumstances, the Exchange believes this is not unfairly discriminatory because it more closely aligns the fee assessment with the time at which Exchange costs are incurred for limited circumstances where the Exchange believes there is a higher likelihood that the application will

be withdrawn prior to the issuance of conditional approval. The Exchange further notes that should a Company not withdraw its application and receive conditional approval to list a Tier I or Tier II security on the Exchange, it will pay no more than any other Company listing such a security.

The Exchange's proposal to assess the Entry Fee, less the Application Fee on the date the Exchange provides conditional approval is reasonable as it more closely aligns with the time that resource costs are incurred by the Exchange and ensures the Exchange is compensated for its costs incurred in reaching a conditional approval. There are several reasons for which a Company may not list a Tier I or Tier II that has already received conditional approval to list on the Exchange. For example, as discussed above, a Company may choose to list on another national securities exchange rather than the Exchange. Alternatively, a Company may not meet other regulatory requirements or the conditions provided in the conditional approval that would prevent them from listing on any national securities exchange, including the Exchange. While the Exchange recognizes that a Company may not list on the Exchange after receiving conditional approval for reasons outside of their control, the Exchange does not believe that the proposal is discriminatory among issuers as it simply aligns with the time that resource costs are incurred by the Exchange. The Exchange also believes that this amendment is not unfairly discriminatory as it will apply to all Companies that submit an application to list a Tier I or Tier II security on the Exchange equally.

The Exchange notes that Rule 14.13(b)(2)(C) provides for the Entry Fee of Exchange Traded Products ("ETPs") listed on the Exchange. Unlike Tier I and Tier II securities listed on the Exchange, the Exchange only charges an Entry Fee to ETPs for which a proposed rule change pursuant to Section 19(b) of the Exchange Act (an "Exchange Rule Filing") is required to be filed with the Commission. Such fee is assessed at the time the Exchange Rule Filing is filed with the Commission. Similar to the proposed fee, the Entry Fee applicable to ETPs is assessed in close proximity to the time the Exchange incurs the cost to prepare and file an Exchange Rule

Filing rather than on the date of initial listing. Given this, the Exchange does not believe the proposal unfairly discriminates issuers of Tier I or Tier II securities from issuers of ETPs on the Exchange.

Lastly, the Exchange's proposal to delete the text of Rule 14.13(b)(1)(E) and modify Rule 14.13(a) is reasonable because it will clarify that both the Application Fee and Entry Fee are non-refundable. Exchange Rule 14.13(a) currently provides that the Application Fee is non-refundable. While the Rule 14.13(b)(1)(E) implies that the Entry Fee may be refundable, it is never refundable in practice as it is currently assessed on the date of initial listing on the Exchange. Furthermore, the Exchange believes that the Application Fee and Entry Fee are reasonably designed to compensate the Exchange for the cost incurred by reviewing an application to list on the Exchange. Therefore, as such review is nearly complete at the time conditional approval is provided by the Exchange, it is reasonable that Entry Fee is non-refundable.

Given the foregoing, the Exchange believes the proposed fee amendments 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 that is not necessary or appropriate in furtherance of the purposes of the Act. The market for listing services is extremely competitive and listed companies may freely choose alternative venues based on the aggregate fees assessed, and the value provided by each listing.

While the proposal does not change the combined amount of the Entry Fee and Application Fee for both Tier I and Tier II securities that list on the Exchange, certain Companies may pay a higher Application Fee. Nonetheless, the Exchange does not believe that the proposal will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposal to assess a higher Application Fee in certain circumstances as described herein is reasonable because it more closely aligns the

fee assessment with the time at which the Exchange incurs costs in only limited circumstances where the Exchange believes there is a higher likelihood that the application will be withdrawn prior to the issuance of conditional approval. As discussed above, the Exchange is not proposing additional fees for Companies that decide not to list with the Exchange. Where a Company that is already engaged in the application process with another exchange, such a Company will be subject to the higher Application Fee upon application with the Exchange. Where a Company is already engaged in the listing process with the Exchange and is considering listing with another exchange, such a Company can have any level of engagement short of filing an application on that other exchange without subjecting itself to any additional fees. Such a Company could also terminate the application process with the Exchange and begin the listing process with another exchange and not be subject to any additional fees. As such, this proposal is not imposing any meaningful burden on competition. Rather, the Exchange is merely trying to ensure that it is compensated for the resources that it expends in a situation where it is less likely for the full Entry Fee to be paid. While such an arrangement could result in Companies that do not list with the Exchange paying a higher Application Fee, the Exchange does not believe the proposal will disincentivize Companies to submit applications to list on other national securities exchanges and thereby burden competition. Rather, the Exchange believes the proposal will reasonably compensate the Exchange for its review of the application and may incentivize Companies to choose not to engage in or terminate the application process on the Exchange when there is a higher likelihood that the Company will list on another national securities exchange.

In addition, as proposed Companies that don't list on the Exchange, either by choice or because it failed to meet the conditions set forth in the conditional approval or some other regulatory requirement, will be assessed the Entry Fee less the Application Fee at the time of conditional approval. Therefore, Companies that receive conditional approval, but do not list on the Exchange will pay a fee they would not be subject to under the current rule. The Exchange does not believe that this fee assessment will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act because it simply aligns the fee with the time that resource costs are incurred by the Exchange. Therefore, the Exchange believes the proposal is consistent with Section 6(b)(8) of the Act.

The Exchange believes that the proposed amendments do not encumber competition for listings with other listing venues, which are similarly free to set their fees. Rather, it reflects competition among listing venues and will further enhance competition.

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 Act<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> 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 (<https://www.sec.gov/rules/sro.shtml>); or

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2023-092 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-2023-092. 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-2023-092 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.<sup>14</sup>

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<sup>14</sup> 17 CFR 200.30-3(a)(12).

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-26007 Filed: 11/24/2023 8:45 am; Publication Date: 11/27/2023]