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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-102408; File No. SR-CboeBZX-2024-112]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend BZX Rule 14.11(l) to Permit the Generic Listing and Trading of Multi-Class ETF Shares

February 12, 2025.

I. Introduction

On November 8, 2024, 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 14.11(l) to permit the generic listing and trading of Multi-Class ETF Shares. The proposed rule change was published for comment in the Federal Register on November 25, 2024.³ The Commission has received no comments on the proposed rule change.

On December 18, 2024, 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 The Commission is publishing this order to institute proceedings pursuant to Section 19(b)(2)(B) of the Act⁶ to determine whether to disapprove 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. 101655 (November 19, 2024), 89 FR 92989 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 101960, 89 FR 105118 (December 26, 2024). The Commission designated February 23, 2025 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposed Rule Change

BZX Rule 14.11(l) governs the generic listing and trading of Exchange-Traded Fund Shares (“ETF Shares”)⁷ on the Exchange. BZX Rule 14.11(l)(4) currently provides that the Exchange may approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) pursuant to Rule 19b-4(e) under the Act,⁸ provided such series of ETF Shares is eligible to operate in reliance on Rule 6c-11 under the 1940 Act, and must satisfy the requirements of BZX Rule 14.11(l) on an initial and continued listing basis.⁹ BZX Rule 14.11(l)(4)(A) also specifically requires that the requirements of Rule 6c-11 under the 1940 Act must be satisfied by a series of ETF Shares on an initial and continued listing basis.¹⁰ In addition, BZX Rule 14.11(l)(4)(B)(i) provides that, if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the 1940 Act, the Exchange will consider suspending trading in, and will commence delisting proceedings under BZX Rule 14.12 for, the series of ETF Shares.¹¹

The Exchange proposes to expand BZX Rule 14.11(l) to allow the Exchange to also approve a series of ETF Shares for listing and/or trading (including pursuant to unlisted trading privileges) on the Exchange pursuant to Rule 19b-4(e) under the Act, provided such series of ETF Shares is eligible to operate in reliance on any exemptive relief under Rule 6c-11 under the 1940 Act that permits the fund to offer a class of ETF Shares in addition to classes of shares that

⁷ ETF Shares are shares of stock issued by an Exchange-Traded Fund. See BZX Rule 14.11(l)(3)(A). Exchange-Traded Fund means “exchange-traded fund” as defined in Rule 6c-11 under the Investment Company Act of 1940 (“1940 Act”). See BZX Rule 14.11(l)(3)(B).

⁸ Rule 19b-4(e)(1) under the Act provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be 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 self-regulatory organization’s trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class. See 17 CFR 19b-4(e)(1). Rule 19b-4(e) defines “new derivative securities product” as any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument. See 17 CFR 19b-4(e).

⁹ See BZX Rule 14.11(l)(4).

¹⁰ See BZX Rule 14.11(l)(4)(A).

¹¹ See BZX Rule 14.11(l)(4)(B)(i).

are not exchange-traded (“Multi-class ETF Shares”). Similarly, as proposed, such series also must satisfy the requirements of BZX Rule 14.11(l) on an initial and continued listing basis. The Exchange also proposes that the requirements of Rule 6c-11, including the requirements of any exemptive relief applicable to Multi-class ETF Shares, must be satisfied by a series of ETF Shares on an initial and continued listing basis. Lastly, the Exchange proposes to amend BZX Rule 14.11(l)(4)(B)(i)(a) to provide that, if the Exchange becomes aware that the issuer of the ETF Shares is no longer eligible to operate in reliance on Rule 6c-11 under the 1940 Act or any exemptive relief applicable to Multi-class ETF Shares, the Exchange will consider suspending trading in the series and will commence delisting proceedings under BZX Rule 14.12.

The Exchange states that there are numerous applications for exemptive relief for Multi-class ETF Shares currently before the Commission that request exemptive relief similar to that previously granted to other funds that are not listed on the Exchange.¹² As a result, the Exchange states that the proposed amendment would provide for the generic listing and/or trading of Multi-class ETF Shares under BZX Rule 14.11(l) on the Exchange immediately upon the Commission’s applicable order granting exemptive relief.¹³ The Exchange further states that it submits the proposal only to prevent any unnecessary delay in listing Multi-class ETF Shares when and if such requests for exemptive relief are granted by the Commission.¹⁴

The Exchange states that “permitting Multi-class ETF Shares to list on the Exchange is consistent with the applicable exemptive relief and will help perfect the mechanism of a free and open market and, in general, will protect investors and the public interest in that it will permit the listing and trading of Multi-class ETF Shares, consistent with the applicable exemptive relief, and in a manner that will benefit investors.”¹⁵ Specifically, the Exchange believes that the

¹² See Notice, supra note 3, 89 FR at 92990.

¹³ See id.

¹⁴ See id. The Exchange also restates that it “is only proposing to amend its rules to allow such a series of Multi-class ETF Shares to list on the Exchange pursuant to Rule 14.11(l), a change to its rules that will only be meaningful if and when the Commission grants such relief to an [a]pplicant.” Id., 89 FR at 92991.

¹⁵ Notice, supra note 3, 89 FR at 92991.

exemptive relief proposed in the applications and the expected benefits of the Multi-class ETF Shares would be to the benefit of investors, and that eliminating any unnecessary delay for additional Multi-class ETF Shares listing on the Exchange under BZX Rule 14.11(l), as proposed to be amended, will simply help accrue those benefits to investors more expeditiously.¹⁶ The Exchange states that, to the extent that the Commission does not grant Multi-class ETF Shares relief, the proposed change to BZX Rule 14.11(l) will have no impact on series of ETF Shares listed on the Exchange.¹⁷ The Exchange further states that amending BZX Rule 14.11(l) to explicitly provide that the initial and continued listing standards applicable to ETF Shares, including the suspension of trading or removal standards, which would be applicable to Multi-class ETF Shares operating under any applicable exemptive relief, is designed to promote transparency and clarity in the Exchange's rules.¹⁸ The Exchange believes that these amendments would clearly allow Multi-class ETF Shares to list and trade upon the Commission's order of exemptive relief.¹⁹

The Exchange further states that, while Multi-class ETF Shares could potentially be listed under existing BZX Rules 14.11(c) or 14.11(i), it would require quantitative portfolio requirements and ongoing compliance obligations that the Exchange believes are unnecessary and burdensome.²⁰ The Exchange also states that it "is not aware of any clear policy rationale as to why those quantitative requirements should apply to Multi-class ETF Shares other than the rules are already in place."²¹ In addition, the Exchange states that, while the applicants generally seek the same exemptive relief as granted under the previous orders, several applicants have proposed different conditions to the relief that reflect the adoption of Rule 6c-11, and, as a result,

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

¹⁹ See id. See also supra note 14 and accompanying text.

²⁰ See Notice, supra note 3, 89 FR at 92990.

²¹ Id., 89 FR at 92990-91.

the Exchange believes there is a reasonable relationship between the proposed rule change and the applications for exemptive relief to allow the Commission to evaluate whether the proposed rule change is consistent with the Act.²² The Exchange also acknowledges that approval of this proposed rule change would not necessarily result in the listing and trading of additional Multi-class ETF Shares under proposed BZX Rule 14.11(l) until and unless the necessary exemptive relief was granted, but that approving this proposal would address any potential concerns the Commission might have as it specifically relates to the listing and trading of Multi-class ETF Shares under proposed BZX Rule 14.11(l) and “would allow for a smooth launch process if and when such relief is granted.”²³

III. Proceedings to Determine Whether to Approve or Disapprove SR-CboeBZX-2024-112 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act²⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,²⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposal’s consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to

²² See id.

²³ Id.

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ Id.

prevent fraudulent and manipulative acts and practices” and “to protect investors and the public interest.”²⁶

The Commission asks that commenters address the sufficiency of the Exchange’s statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on whether the proposal is consistent with Section 6(b)(5) of the Act,²⁷ and specifically, whether the proposed rule change is designed to prevent fraudulent and manipulative acts and practices.

According to the Exchange, a number of applications for exemptive relief to permit the applicable fund to offer Multi-class ETF Shares have been submitted to the Commission, and that such applications for exemptive relief are similar to those previously granted to other funds that are not listed on the Exchange.²⁸ However, the Exchange provides no indication that any exemptive relief to such applicants has yet been granted or from what elements of either Rule 6c-11 or sections of, or particular rules under, the 1940 Act issuers would be exempt. Correspondingly, it is unclear whether the proposed rule change actually would allow for the generic listing of shares of any funds authorized to offer a class of ETF Shares in addition to classes of shares that are not exchange-traded.

In addition, although the Exchange states that its proposed rule change is to prevent any unnecessary delay in listing Multi-class ETF Shares when and if the requested prospective exemptive relief is granted by the Commission, BZX Rule 14.11(1), as proposed to be amended, would allow the Exchange to generically list and trade ETF Shares issued by a fund that has received any exemptive relief under Rule 6c-11 under the 1940 Act to offer Multi-class ETF Shares, not only the requested prospective exemptive relief referenced in the proposed rule

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ Id.

²⁸ See Notice, supra note 3, 89 FR at 92990.

change. The Exchange further states that, while the applicants generally seek the same exemptive relief as granted under the previous orders, several applicants have proposed different conditions to the relief that reflect the adoption of Rule 6c-11 and that this establishes a reasonable relationship between the proposed rule change and the applications for exemptive relief to allow the Commission to evaluate whether the proposed rule change is consistent with the Act.²⁹ The Commission seeks comment on whether the Exchange has provided sufficient information and explanation regarding either the requested proposed exemptive relief referenced in the proposed rule change or other future exemptive relief that has not yet been requested, and the relationship between any such exemptive relief and its proposed rule change, as well as the factors the Commission considered in approving BZX Rule 14.11(1),³⁰ to allow an evaluation of whether the proposed rule change is consistent with Section 6 of the Act. In particular, the Commission requests comment on whether the Exchange has provided sufficient explanation of how its proposed rule change is designed to prevent fraudulent and manipulative practices in light of the scope of the exemptive relief under Rule 6c-11 potentially available to the Multi-class ETF Shares that may be generically listed under the proposed rule change.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be

²⁹ See *id.*, 89 FR at 92990-91. See also *supra* note 22 and accompanying text.

³⁰ See Securities Exchange Act Release No. 88566 (April 6, 2020), 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097).

facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.³¹

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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-2024-112 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-2024-112. 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

³¹ Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding – either oral or notice and opportunity for written comments – is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

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-2024-112 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Rebuttal comments should be submitted by [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

Sherry R. Haywood,

Assistant Secretary.

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³² 17 CFR 200.30-3(a)(57).