

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-94741; File No. SR-CboeBZX-2022-026)

April 18, 2022

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Eliminate the Minimum Price Variance Provisions of Exchange Rule 14.11(i) (Managed Fund Shares), (l) (Exchange-Traded Fund Shares), and (m) (Tracking Fund Shares)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 11, 2022, Cboe BZX Exchange, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposal to eliminate the Minimum Price Variance provisions of Exchange Rule 14.11(i) (Managed Fund Shares), (l) (Exchange-Traded Fund Shares), and (m) (Tracking Fund Shares). 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.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate the Minimum Price Variance provisions of Exchange Rule 14.11(i), (l), and (m), which correspond to the Exchange's listing rules for Managed Fund Shares,<sup>5</sup> Exchange-Traded Fund Shares ("ETF Shares"),<sup>6</sup> and Tracking Fund Shares,<sup>7</sup> respectively.

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<sup>5</sup> The term "Managed Fund Share" means a security that (i) represents an interest in a registered investment company ("Investment Company") organized as an open-end management investment company or similar entity, that invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value. See Exchange Rule 14.11(i)(3)(A).

<sup>6</sup> The term "ETF Shares" means shares of stock issued by an Exchange-Traded Fund. See Exchange Rule 14.11(l)(3)(A). The term "Exchange-Traded Fund" has the same meaning as the term "exchange-traded fund" as defined in Rule 6c-11 under the Investment Company Act of 1940. See Exchange Rule 14.11(l)(3)(B).

<sup>7</sup> The term "Tracking Fund Share" means a security that: (i) represents an interest in an

Currently, Exchange Rules 14.11(i)(2)(B), (l)(2)(B), and (m)(2)(C) provide that the minimum price variation for quoting and entry of orders in Managed Fund Shares, ETF Shares, and Tracking Fund Shares, respectively, is \$0.01 (collectively, the “ETP MPV Rules”) regardless of the price of the security. The Exchange proposes to delete the ETP MPV Rules because they may appear to be inconsistent with Exchange Rule 11.11 and Rule 612 of Regulation National Market System (“NMS”)<sup>8</sup> because the ETP MPV Rules do not specifically include the minimum price variance for securities that are priced less than \$1.00. Specifically, Rule 612 of Regulation NMS specifies minimum pricing increments for NMS stocks, which include Managed Fund Shares, ETF Shares, and Tracking Fund Shares.<sup>9</sup> In general, Rule 612 of Regulation NMS prohibits market participants from displaying, ranking, or accepting quotations, orders, or indications of interest in any NMS stock priced in an increment smaller than \$0.01 if the quotation, order, or indication of interest is priced equal to or greater than \$1.00 per share. If the quotation, order, or indication of interest is priced less than \$1.00 per share, the minimum pricing increment is \$0.0001. Similarly,

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investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket or Custom Basket, as applicable, and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter. See Exchange Rule 14.11(m)(3)(A).

<sup>8</sup> 17 CFR 242.612.

<sup>9</sup> An “NMS stock” is any NMS security other than an option. See 17 CFR 242.600(b)(55). An “NMS security” is any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See 17 CFR 242.600(b)(54).

Exchange Rule 11.11 provides that bids, offers, orders or indications of interest in securities traded on the Exchange shall not be made in an increment smaller than (1) \$0.01 if those bids, offers or indications of interests are priced equal to or greater than \$1.00 per share; or (2) \$0.0001 if those bids, offers or indications of interests are priced less than \$1.00 per share and the security is an NMS stock pursuant to Commission Rule 600(b)(46) under the Act and is trading on the Exchange; or (3) any other increment established by the Commission for any security which has been granted an exemption from the minimum price increments requirements of Commission Rule 612(a) or 612(b).<sup>10</sup> Because the intent was not for ETP MPV Rules to supersede Rule 612 of Regulation NMS or Exchange Rule 11.11, the Exchange is proposing to delete these paragraphs to remove any potential confusion as to the minimum price variance requirements for Managed Fund Shares, ETF Shares, and Tracking Fund Shares priced less than \$1.00.<sup>11</sup>

Based on the Exchange's proposal to remove the ETP MPV Rules, the Exchange also proposes to re-letter subparagraphs under Rules 14.11(i)(2), (l)(2), and (m)(2) to reflect the removal of those paragraphs.

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<sup>10</sup> See Exchange Rule 11.11.

<sup>11</sup> See Securities Exchange Act Release Nos. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR-BATS-2015-100) (Order Approving a Proposed Rule Change, as Modified by Amendment No. 6, To Amend BATS Rule 14.11(i) To Adopt Generic Listing Standards for Managed Fund Shares); 88566 (April 6, 2020), 85 FR 20312 (April 10, 2016) (SR-CboeBZX-2019-097) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt BZX Rule 14.11(l) Governing the Listing and Trading of Exchange-Traded Fund Shares); 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, To Adopt Rule 14.11(m), Tracking Fund Shares, and To List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF) (collectively, with the corresponding notices referred to as the "Original ETP MPV Rule filings"). None of the Original ETP MPV Rule filings contain any discussion that the ETP MPV Rule was intended to supersede Exchange Rule 11.11 or Rule 612 of Regulation NMS.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with 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>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(1)<sup>14</sup> requirements that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to section 78q(d) or 78s(g)(2) of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Exchange's proposal to delete the ETP MPV Rules is intended to remove any potential confusion as to the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than \$1.00. As discussed

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<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(1).

above, the ETP MPV Rules were not intended to supersede Rule 612 of Regulation NMS or Exchange Rule 11.11.

The proposal is intended to remove any potential confusion in the Exchange's Rules as it relates to the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than \$1.00, which the Exchange believes will 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. The Exchange believes that re-lettering current Rules to correspond to the proposed changes will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion. For these reasons, the Exchange believes the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 6(b)(1) of 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 proposed rule change is not designed to address any competitive issues but rather to remove any potential confusion regarding the minimum price variance for Managed Fund Shares, ETF Shares, and Tracking Fund Shares listed on the Exchange and priced less than \$1.00.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>15</sup> and Rule 19b-4(f)(6) thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiver of the 30-day operative delay will add clarity to BZX's rules and remove any potential inconsistency between the ETP MPV Rules and Exchange Rule 11.11 and Rule 612 of Regulation NMS. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.<sup>19</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>17</sup> 17 CFR 240.19b-4(f)(6).

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2022-026 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-2022-026. 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-2022-026 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.<sup>20</sup>

Jill M. Peterson  
Assistant Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).