SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88259; File No. SR-CboeBZX-2020-007)

February 21, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Eliminate the Requirement that the Intraday Indicative Value be Disseminated as Set Forth Under Rule 14.11(c) for Certain Series of Index Fund Shares and Under Rule 14.11(i) for All Series of Managed Fund Shares

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 February 14, 2020, Cboe BZX Exchange, Inc. (the "Exchange") 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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to eliminate the requirement that the Intraday Indicative Value be disseminated as set forth under Rule 14.11(c) ("Index Fund Shares") for certain series of Index Fund Shares and under Rule 14.11(i) ("Managed Fund Shares") for all series of Managed Fund Shares. 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.

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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

Exchange Rules 14.11(c) and 14.11(i) relate to the listing and trading of Index Fund Shares and Managed Fund Shares on the Exchange. Among a number of other requirements, numerous sub-paragraphs of each of these rules require that an intraday estimate of the value of a share of each series (the "Intraday Indicative Value" or "IIV") of Index Fund Shares and Managed Fund Shares be disseminated and updated at least every 15 seconds.[3] The Exchange is proposing to eliminate the requirement to disseminate an IIV for all series of Managed Fund Shares[4] listed on the Exchange and for those series of Index Fund Shares that also publish their Portfolio Holdings (as defined below) on a daily basis.

As part of this proposal, the Exchange is also proposing to adopt proposed Rule 14.11(c)(1)(F) to define the term "Portfolio Holdings" which would mean the holdings of a particular series of Index Fund Shares that will form the basis for the calculation of its net asset value ("NAV") at the end of the business day.[5] Existing Exchange Rules require issuers of Managed Fund Shares to provide IIV and daily disclosure of the Disclosed Portfolio.[6] Similarly,

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3 See subparagraphs (c)(3)(C), (c)(6)(A), and (c)(9)(B)(i)(e) of Exchange Rule 14.11. See also subparagraphs (i)(3)(C), (i)(3)(D), (i)(4)(B)(i), (i)(4)(B)(iii)(b), and (i)(4)(B)(iv) of Exchange Rule 14.11.

4 The Exchange notes that Rule 14.11(i)(4)(B)(ii)(a) requires that the Disclosed Portfolio for a series of Managed Fund Shares be disseminated at least once daily and be made available to all market participants at the same time. Further, Rule 14.11(i)(4)(B)(iii)(b) requires that the Exchange consider suspension of trading in and commence delisting proceedings for a series of Managed Fund Shares where the Disclosed Portfolio is not made available to all market participants at the same time. As such, the Exchange is proposing to eliminate the IIV dissemination requirements entirely from Rule 14.11(i).

5 For purposes of Rule 14.11(c), Portfolio Holdings would include various information, to the extent applicable, as listed in proposed subparagraphs (c)(1)(F)(i) through (c)(1)(F)(xi). The proposed definition of Portfolio Holdings is substantively identical to the definition of "Disclosed Portfolio" as set forth in Rule 14.11(i)(3)(B).

6 See subparagraphs (i)(3)(B), (i)(4)(A)(ii), and (i)(4)(B)(ii) of Exchange Rule 14.11. The term "Disclosed Portfolio" means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment

existing Exchange Rules require issuers of Index Fund Shares to disseminate an IIV for each fund, but do not universally require daily disclosure of a fund's underlying holdings.[7]

The dissemination of an IIV, together with disclosure of the fund's underlying holdings, was designed to allow investors to determine the value of the underlying portfolio of such funds on a daily basis and provide a close estimate of that value throughout the trading day. However, as consistently highlighted in the adopting release of Rule 17 CFR 270.6c-11 ("Rule 6c-11")[8] under the Investment Company Act of 1940[9] (the "1940 Act"), the Commission has expressed concerns regarding the accuracy of IIV estimates for certain Exchange-Traded Funds ("ETFs").[10] Specifically, the Commission noted that an IIV may not accurately reflect the value of an ETF that holds securities that trade less frequently as such IIV can be stale or inaccurate.[11] Similarly, the Commission also expressed concerns with the IIV of ETFs with frequently traded component securities because "in today's fast moving markets, given the dissemination lags, an IIV may not

Company's calculation of net asset value at the end of the business day. See also Exchange Rule 14.11(i)(3)(B).

7 The Exchange notes that Rule 14.11(c)(1)(B)(iv) would require the daily disclosure of certain information related to a fund's portfolio holdings where a fund "seeks to provide investment results that either exceed the performance of a specified…index…by a specified multiple or that correspond to the inverse (opposite) of the performance of a specified…index…by a specified multiple," however, the Exchange does not currently list any such funds.

8 See Investment Company Act Release No. 10695 (September 25, 2019), 84 FR 57162 (October 24, 2019) (the "Adopting Release").

9 15 U.S.C. 80a-1.

10 An Exchange-Traded Fund means a registered open-end investment company: (i) that issues (and redeems) creation units to (and from) authorized participants in exchange for a basket and a cash balancing amount if any; and (ii) Whose shares are listed on a national securities exchange and traded at market-determined prices. See Id.

11 See supra note 8, at 62.

accurately reflect the value of an ETF that holds frequently traded component securities."[12] Additionally, the Commission indicated that even in circumstances when an IIV may be reliable, retail investors do not have easy access to free, publicly available IIV information.[13] Further, in instances when IIV may be free and publicly available, it can be delayed by up to 45 minutes.[14]

Aside from the fact that the disseminated IIV may provide investors with stale or misleading data, the Commission also stated that market makers and authorized participants typically calculate their own intraday value of an ETF's portfolio with proprietary algorithms that use an ETF's daily portfolio disclosure and available pricing information.[15] Such information allows those market participants to support the arbitrage mechanism for ETFs. The arbitrage mechanism is designed to help keep the market price of ETF shares at or close to the NAV per share of an ETF, and is important because it helps to ensure ETF investors are treated equitably when buying and selling fund shares.[16] Therefore, as market participants who engage in arbitrage typically calculate their own intraday value of an ETF's portfolio based on the ETF's daily portfolio disclosure and pricing information and use an IIV only as a secondary check to their own calculation,[17] the Commission noted that IIV was not necessary to support the arbitrage mechanism.[18] Given this, combined with shortcomings of the IIV noted above, the

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12 See id.

13 See Id., at 66.

14 See Id.

15 See Id., at 63.

16 See Id., at 12.

17 See Id., at 63.

18 See Id., at 65.

Commission concluded that ETFs will not be required to disseminate an IIV under Rule 6c-11.[19] As such, exchange listing rules are the only reason that a series of Managed Fund Shares is required to disseminate an IIV. Similarly, exchange listings rules are the only reason that a series of Index Fund Shares that also publishes its Portfolio Holdings on a daily basis is required to disseminate an IIV.

The Exchange believes that the limitations and shortcomings of IIV as it pertains to ETFs relying on Rule 6c-11 and highlighted in the Adopting Release are equally applicable to all Managed Fund Shares listed on the Exchange and Index Fund Shares for which the Portfolio Holdings are disclosed on a daily basis. The Exchange further agrees with the conclusion of the Adopting Release that the "IIV is not necessary to support the arbitrage mechanism for ETFs that provide daily portfolio holdings disclosure." The transparency that comes from daily portfolio holdings disclosure provides market participants with sufficient information to facilitate the intraday valuation of the shares of an ETF, including Managed Fund Shares and Index Fund Shares for which Portfolio Holdings are disclosed daily, which, ignoring the many criticisms of IIV in the Adopting Order, renders IIV at the very least duplicative and unnecessary.

As such, the Exchange is proposing to eliminate the requirement for the dissemination of the IIV for all series of Managed Fund Shares and for Index Fund Shares for which Portfolio Holdings are disclosed on a daily basis. Additionally, the Exchange is proposing to make conforming numbering changes to Rules 14.11(c) and 14.11(i).

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

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19 See Id., at 61.

Section 6(b) of the Act.[20] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[21] 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 proposed amendment seeks to eliminate the requirement that Managed Fund Shares and Index Fund Shares for which the Portfolio Holdings are disclosed daily, disseminate an IIV for the same reasons articulated in the Adopting Order for Rule 6c-11, which does not require the dissemination of IIV. The Exchange believes that the proposed amendment will eliminate the dissemination of potentially stale and misleading IIV information to market participants, as was also noted in the Adopting Order. Further, as the proposed rule text would only eliminate the requirement for series of Index Fund Shares[22] and Managed Fund Shares[23] that provide full daily portfolio transparency, such full daily portfolio transparency would provide market participants with a tool to easily calculate the IIV of a series of Managed Fund Shares or Index Fund Shares, which the Exchange believes generally mitigates the need for the dissemination of an IIV for certain series of Index Fund Shares or Managed Fund Shares. Nonetheless, nothing in this proposal limits the ability of such Index Fund Shares or Managed Fund Shares from

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20 15 U.S.C. 78f(b).

21 15 U.S.C. 78f(b)(5).

22 As provided in proposed Rules 14.11(c)(3)(C) and 14.11(c)(6)(A), a series of Index Fund Shares would only be exempt from IIV dissemination requirements where there is daily public website disclosure of Portfolio Holdings.

23 See supra note 4.

disseminating the IIV should they choose to do so. Further, the Exchange notes that its rules still include certain circumstances in which an issuer would be required to disseminate an IIV.[24]

As a result of the proposed rule change, the Exchange believes issuers may benefit from cost savings because of the eliminated requirement to disseminate an IIV. The reduced cost could also result in lower barriers to entry for new issuers and new series of Managed Fund Shares and Index Fund Shares for which the Portfolio Holdings are disclosed daily, which will result in enhanced competition among products and issuers of such funds, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.

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. To the contrary, the Exchange believes that issuers may benefit from cost savings and lower barriers to entry because of the eliminated requirement to disseminate an IIV. In turn, the proposed rule change will enable increased product competition among issuers of such funds, which can lead to lower fees for investors, encourage financial innovation, and increase investor choice in the ETF market.

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[24] For example, a series of Index Fund Shares that does not provide daily portfolio transparency would still be required to disseminate an IIV. Additionally, the requirement of IIV dissemination will continue to be required for certain products that are not subject to the Investment Company Act of 1940.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be 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-2020-007 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-2020-007. 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-2020-007 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.[25]

Jill M. Peterson
Assistant Secretary

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[25] 17 CFR 200.30-3(a)(12).