

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 Exchange stated that waiver of this requirement will ensure fair competition among the exchanges by allowing the Exchange to set the interval between strike prices of series of options on ETF shares of QQQ and IWM in a manner consistent with another exchange. Further, the Exchange stated that because the proposed rule change is based on the rules of another Self-Regulatory Organization,<sup>17</sup> it does not introduce any new or novel regulatory issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.<sup>18</sup>

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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2019-24 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-MIAX-2019-24. 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 (<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-MIAX-2019-24 and should be submitted on or before June 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-10510 Filed 5-20-19; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85869; File No. SR-CboeBZX-2019-040]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BZX Equities Fee Schedule To Correct an Inadvertent Drafting Error Introduced in a Previous Rule Filing

May 15, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 1, 2019, 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, 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. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to amend the BZX Equities fee schedule to correct an inadvertent drafting error introduced in a previous rule filing. The text of the proposed rule change is attached as Exhibit 5 (sic).

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.

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

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

<sup>17</sup> See *supra* note 12.

<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the BZX Equities fee schedule to correct an inadvertent drafting error introduced in a previous rule filing that changed the terminology used to describe certain connectivity products offered to Exchange members.

On December 21, 2018, the Exchange filed a proposed rule change to revise the nomenclature associated with logical port fees charged for order entry, which were renamed to “match capacity fees.”<sup>3</sup> The purpose of that filing was to properly characterize the fees for order entry logical ports as capacity fees to better reflect the service offering of these products and shed additional light on how firms are charged for connectivity. Although, as represented in the filing, no changes to the Exchange's charges were proposed,<sup>4</sup> the Exchange thought that this was an important step to increase transparency around its connectivity services. Specifically, the Exchange thought that identifying its fees charged for order entry logical ports as capacity fees, and providing associated data and analysis surrounding the use of order entry logical ports would provide valuable information to the Commission and the industry about the services provided by the Exchange to firms that choose to access these services. To reflect this change to the terminology used to describe order entry logical ports in the BZX Equities fee schedule, the Exchange deleted a line item titled “Logical Ports (excluding Purge Port, Multicast PITCH Spin Server Port or GRP Port),” and replaced it with a section titled “Match Capacity Fees,” subject to the same monthly fee, but unfortunately did not address the remaining logical ports used for other purposes.

The Exchange understands that the deleted language should not have been removed from the fee schedule in order to effect the nomenclature change described in its December filing, as such language was not previously limited to order entry logical ports. As described in a number of prior filings, including

the filing to initially introduce this logical port line item in 2009,<sup>5</sup> the deleted language previously applied both to the order entry ports that were explicitly the subject of the December filing, and a handful of other ports that were not addressed in that filing, including drop ports and ports used for the receipt of certain market data feeds. Specifically, the deleted section had applied to Cboe Auction Feed Ports, FIXDROP Ports, Order Drop Ports, Last Sale Ports, PITCH Ports, and TOP Ports.<sup>6</sup> As a result, the new nomenclature inserted for match capacity fees—which was adopted solely with order entry connectivity in mind—does not quite capture all of the other connectivity offerings included under this section.

The Exchange therefore proposes to add language back to this section to properly account for drop and market data ports that have been charged under the same heading as order entry connectivity since 2009. Specifically, the fee schedule would provide that other logical ports (*i.e.*, including Cboe Auction Feed Ports, FIXDROP Ports, Order Drop Ports, Last Sale Ports, PITCH Ports, and TOP Ports) are subject to a monthly fee of \$550 per month, thereby ensuring that these fees are identified separately from the match capacity fees charged for order entry. The Exchange believes that this change would increase transparency around its charges by fixing a drafting error introduced when the Exchange renamed its order entry logical port charges.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>7</sup> in general, and furthers the requirements of Section 6(b)(4),<sup>8</sup> in particular, 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. Specifically, the Exchange believes that the proposed rule change is reasonable, equitable, and not unfairly discriminatory as it would clarify the fees charged for drop and market data ports. As an unintended result of a drafting error in recent proposed rule change to change the nomenclature associated with order entry connectivity, the BZX Equities fee

schedule is missing language that applied to certain other logical ports. The Exchange believes that reinserting language that references these other logical port options would reduce confusion around the Exchange's charges and ensure that these fees are appropriately referenced on the fee schedule. The fees described in the proposed language are the same as the fees identified prior to the inadvertent deletion of this language in the December filing, but the fee schedule would be amended to explicitly list all of the ports charged under this section in the interest of furthering transparency around the Exchange's charges. The Exchange believes that these steps will help ensure that its fee schedule fully and accurately represents the fees charged for market data logical ports, as previously filed with the Commission.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is designed to reduce potential confusion around the Exchange's connectivity charges by reinstating a line item in the Exchange's fee schedule that should not have been deleted when the Exchange changed the nomenclature associated with order entry logical port fees, and adding additional detail to this item that describes the products for which those fees apply. The Exchange believes that this change would increase transparency to the benefit of members and investors without having any significant impact on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received 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>9</sup> and paragraph (f) of Rule 19b-4<sup>10</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

<sup>3</sup> See Securities Exchange Act Release No. 84963 (December 26, 2018), 84 FR 830 (January 31, 2019) (SR-CboeBZX-2018-095).

<sup>4</sup> For example, the filing repeatedly referenced changes to “the nomenclature associated with the current logical port fees” or “proposed changes in terminology,” and did not address any changes related to logical ports used to deliver market data to subscribers.

<sup>5</sup> See Securities Exchange Act Release No. 60586 (August 28, 2009), 74 FR 46256 (September 8, 2009) (SR-BATS-2009-026) (Approval Order).

<sup>6</sup> All other logical ports, except for Purge Ports, Multicast PITCH Spin Server, Multicast PITCH GRP Ports, and match capacity allocations are currently offered free of charge.

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f).

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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2019-040 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-2019-040. 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 (<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, 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-2019-040, and should be submitted on or before June 11, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85860; File No. SR-NYSEArca-2019-02]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to the Listing and Trading of the Shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF Under NYSE Arca Rule 8.200-E

May 15, 2019.

On January 28, 2019, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to list and trade shares of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF under NYSE Arca Rule 8.200-E. The proposed rule change was published for comment in the **Federal Register** on February 15, 2019.<sup>3</sup>

On March 26, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> 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 approve or disapprove the proposed rule change.<sup>5</sup> The Commission has received no comment letters on the proposal.

The Commission is publishing this order to institute proceedings pursuant

to Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.

#### I. Exchange's Description of the Proposal<sup>7</sup>

The Exchange proposes to list and trade shares ("Shares") of the ProShares UltraPro 3x Natural Gas ETF and ProShares UltraPro 3x Short Natural Gas ETF (individually "Fund" and, collectively, "Funds") under NYSE Arca Rule 8.200-E, Commentary .02, which governs the listing and trading of Trust Issued Receipts.<sup>8</sup> Each Fund is a series of the ProShares Trust II ("Trust"), a Delaware statutory trust.<sup>9</sup> The Trust and the Funds are managed and controlled by ProShare Capital Management LLC ("ProShare Capital" or "Sponsor"). ProShare Capital is registered as a commodity pool operator with the Commodity Futures Trading Commission and is a member of the National Futures Association.

##### *ProShares UltraPro 3x Natural Gas ETF*

The investment objective of this Fund is to seek daily investment results, before fees and expenses, that correspond to three times (3x) the performance of the Bloomberg Natural Gas Subindex<sup>SM</sup> ("Benchmark").<sup>10</sup> This Fund seeks to achieve its investment objective for a single day, not for any other period.<sup>11</sup>

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> The Commission notes that additional information regarding, among other things, the Shares, Funds, investment objective, permitted investments, investment strategies and methodology, investment restrictions, creation and redemption procedures, availability of information, trading rules and halts, and surveillance procedures, can be found in the Notice (*see supra* note 3) and the Registration Statement (*see infra* note 9), as applicable.

<sup>8</sup> Commentary .02 to NYSE Arca Rule 8.200-E applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Commentary .02(b)(4) to NYSE Arca Rule 8.200-E, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

<sup>9</sup> The Trust is registered under the Securities Act of 1933. On May 19, 2017, the Trust filed with the Commission a registration statement on Form S-1 under the Securities Act of 1933 relating to the Funds (File No. 333-218136) ("Registration Statement").

<sup>10</sup> The Benchmark is intended to reflect the performance of a rolling position in natural gas futures contracts listed on the New York Mercantile Exchange ("NYMEX"), including the impact of rolling, without regard to income earned on cash positions. The Benchmark is a "rolling index," which means that the Index performance includes the impact of closing out futures contracts that are nearing expiration and replacing them with futures contracts with later expirations. This process is commonly referred to as "rolling."

<sup>11</sup> The return of a Fund for a period longer than a single trading day is the result of its return for

Continued

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> *See* Securities Exchange Act Release No. 85088 (Feb. 11, 2019), 84 FR 4573 ("Notice").

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> *See* Securities Exchange Act Release No. 85417 (Mar. 26, 2019), 84 FR 12304 (Apr. 1, 2019). The Commission designated May 16, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.