

As discussed above, under the current rule, a series of Tracking Fund Shares must create or redeem shares in return for the Tracking Basket and/or cash. The Exchange is now proposing to amend BZX Rule 14.11(m) to allow a series of Tracking Fund Shares to create or redeem shares in return for a Custom Basket, which is a portfolio of securities that is different from the Tracking Basket, to the extent consistent with an issuer's exemptive relief under the 1940 Act.¹⁷ For the reasons discussed below, the Commission finds that the proposed amendments to BZX Rule 14.11(m) to provide for the use of Custom Baskets for Tracking Fund Shares, to the extent permitted by an issuer's exemptive relief under the 1940 Act, are consistent with Section 6(b)(5) of the Exchange Act.

The Commission believes that the proposed changes to BZX Rules 14.11(m)(2)(E) and (F) are consistent with the Exchange Act and are reasonably designed to help prevent fraudulent and manipulative acts and practices. The Commission notes that, because Tracking Fund Shares do not publicly disclose on a daily basis information about the holdings of the Fund Portfolio, it is vital that key information relating to Tracking Fund Shares, including information relating to Custom Baskets, be kept confidential prior to its public disclosure and not be subject to misuse.¹⁸ Accordingly, the Commission believes that the Exchange's proposal to amend BZX Rules 14.11(m)(2)(E) and (F)¹⁹ to apply the current "fire wall" and other requirements contained therein to those that have access to information concerning, or make decisions pertaining to, the composition of and/or changes to the Custom Baskets, in addition to the existing requirements relating to the Fund Portfolio and the Tracking Basket, is designed to prevent fraud and manipulation with respect to Tracking Fund Shares.

The Commission also believes that the proposed amendments to the initial and continued listing requirements for

Tracking Fund Shares are adequate to ensure transparency of information relating to Custom Baskets utilized by a fund and to ensure that such information is available to the rest of the market participants at the same time. Specifically, prior to the opening of trading on each business day, the Investment Company will make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash.²⁰ In addition, prior to the initial listing of the Tracking Fund Shares, the Exchange will be required to obtain a representation from the issuer of each series of Tracking Fund Shares that the issuer and any person acting on behalf of the series of Tracking Fund Shares will comply with Regulation FD, including with respect to any Custom Basket.²¹ These measures help to mitigate concerns that certain information regarding the funds will be available only to select market participants and thereby help to prevent fraud and manipulation.

The Commission notes that, as set forth in the definition of "Custom Basket," a series of Tracking Fund Shares may only utilize Custom Baskets to the extent consistent with the exemptive relief issued pursuant to the 1940 Act applicable to such series.²² The Commission further notes that all series of Tracking Fund Shares will continue to be subject to the existing rules and procedures that govern the listing and trading of Tracking Fund Shares and the trading of equity securities on the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act²³ that the proposed rule change (SR–CboeBZX–2021–053), be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93144; File No. SR–CboeBZX–2021–056]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Allow the Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF To Strike and Publish an Intra-Day NAV and an End-of-Day NAV

September 28, 2021.

On August 12, 2021, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") 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 allow the Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF to strike and publish an intra-day net asset value ("NAV") and an end-of-day NAV. The proposed rule change was published for comment in the *Federal Register* on August 24, 2021.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 8, 2021.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds it appropriate to designate a longer period within which

19(b) of the Exchange Act for each series of Tracking Fund Shares. See BZX Rule 14.11(m)(2)(A).

¹⁷ The Commission has granted exemptive relief under the 1940 Act to certain series of Tracking Fund Shares to permit the creation or redemption of shares using a Custom Basket that includes instruments that are not included, or included with different weightings, in the fund's Tracking Basket. See, e.g., Fidelity Beach Street Trust, et al., Investment Company Act Release No. 34350 (August 5, 2021).

¹⁸ See 2020 Order, *supra* note 16, 85 FR at 31002–03.

¹⁹ See *supra* Section II, describing proposed BZX Rules 14.11(m)(2)(E) and (F).

²⁰ See proposed BZX Rule 14.11(m)(4)(B)(ii).

²¹ See proposed BZX Rule 14.11(m)(4)(A)(ii)(c). The Commission notes that a fund's use of, or conversations with authorized participants about, Creation Baskets that would result in selective disclosure of nonpublic information would effectively be limited by the fund's obligation to comply with Regulation FD. See, e.g., Fidelity Beach Street Trust, et al., Investment Company Act Release No. 34326 (July 9, 2021).

²² See proposed BZX Rule 14.11(m)(3)(F).

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Securities Exchange Act Release No. 92701 (August 18, 2021), 86 FR 47359.

⁴ 15 U.S.C. 78s(b)(2).

to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designates November 22, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2021-056).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93149; File No. SR-CboeBZX-2021-064]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to the Exchange's Fee Schedule

September 28, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 21, 2021, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") 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 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. (the "Exchange" or "BZX" or "BZX Equities") proposes to amend its Fee Schedule. 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.

⁵ *Id.*

⁶ 17 CFR 200.30-3(a)(31).

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

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("BZX Equities") to modify the rebate associated with a certain routing fee code and eliminate certain routing fee codes.³

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, discontinue, or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces

³ The Exchange initially filed the proposed fee changes September 1, 2021 (SR-CboeBZX-2021-061). On September 13, 2021, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR-CboeBZX-2021-062). On September 21, 2021, the Exchange withdrew that filing and re-submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 26, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange assesses fees and provides rebates in connection with orders routed away to various exchanges. Now, the Exchange proposes to modify a particular routing fee code currently under the Fee Codes and Associated Fees section of the Fee Schedule. First, the Exchange proposes to modify fee code NX, which is appended to orders routed to NYSE National, Inc. ("NYSE National") using the TRIM or SLIM routing strategy, and currently provides a rebate of \$0.00200 per share. The Exchange proposes to reduce the rebate to \$0.00050 per share.

Additionally, as a result of minimal use in the last months, the Exchange proposes to eliminate fee codes BO and SX in their entirety. Fee code BO is appended to orders routed using a destination specific routing strategy unless otherwise specified, and currently assesses a fee of \$0.00300 per share. Fee code SX is appended to orders routed using the SLIM routing strategy (except to Cboe BYX Exchange, Inc. ("BYX Equities"), Cboe EDGA Exchange, Inc. ("EDGA Equities"), Nasdaq BX, Inc. ("Nasdaq BX"), NYSE American LLC ("NYSE American") or NYSE National), and currently assesses a fee of \$0.00290 per share. The Exchange believes that because so few users elect to route their orders with specifications to which fee code BO or SX is applicable, the current demand does not warrant the infrastructure and ongoing Systems maintenance required to support the separate fee codes. Therefore, the Exchange now proposes to delete fee code BO and SX in the Fee Schedule. The Exchange notes that users will continue to be able to choose to route their orders with the same specifications to which fee codes BO and SX currently applies—such orders will simply be assessed the fees currently in place for routed orders generally.⁵ That is, if any of the routed orders to which fee code BO or SX currently apply fee code X will be appended to such orders, which assesses a fee of \$0.00300 per share.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

⁵ The Exchange notes that there are other fee codes that apply to certain other routing specifications, however, those routed orders not otherwise specified in such other routing fee code descriptions yield the general routing fee code X.