

extremely limited. The proposal is reflective of this competition.

Even as one of the largest U.S. equities exchanges by volume, the Exchange has less than 20% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and credit changes. This is in addition to free flow of order flow to and among off-exchange venues, which comprises upwards of 50% of industry volume.

In sum, the Exchange intends for the proposed change to its fees for RPI Orders, in the aggregate, to increase member incentives to engage in the addition of liquidity on the Exchange. If the change proposed herein is unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

No written comments were either solicited or received.

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)(ii) of the Act.¹⁰

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-BX-2023-15 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-BX-2023-015. 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 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-BX-2023-15 and should be submitted on or before July 5, 2023.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-12660 Filed 6-13-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97675; File No. SR-CboeBZX-2023-036]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Revise Certain of the Exchange's Initial Listing Standards

June 8, 2023.

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 May 26, 2023, Cboe BZX Exchange, Inc. filed with the Securities and Exchange 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 ("Commission" or "SEC") a proposed rule change to revise certain of the Exchange's initial listing standards. 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.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

¹¹ 17 CFR 200.30-3(a)(12).

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

1. Purpose

The Exchange proposes to make several amendments to increase its requirements for initial listing of certain Tier I and II securities and help assure adequate liquidity for such listed securities. Specifically, the Exchange proposes to (i) impose a new requirement that at least 50% of a company's Round Lot Holders³ must each hold "Unrestricted Securities", as defined below, with a Market Value⁴ of at least \$2,500; (ii) impose a new minimum average daily trading volume for securities trading over-the-counter ("OTC") of at least 2,000 shares over the 30 day period prior to listing (with trading occurring on more than half of those 30 days) including trading volume of the underlying security on the primary market with respect to an ADR; and (iii) increase the Exchange's requirements for initial listing to help assure adequate liquidity. The Exchange also proposes to adopt an alternative to the minimum \$4 price requirement for companies that seek to list Tier II securities on the Exchange which meet the express exclusion from the definition of a "penny stock" contained in Exchange Act Rule 3a51-1(g).⁵ Such an amendment would allow a Company to list a Tier II security on the Exchange if it satisfies all existing and proposed listing standards except for the \$4 price requirement.⁶ The proposed amendments are very similar to existing initial listing requirements on the Nasdaq Stock Market, LLC ("Nasdaq").⁷

The Exchange proposes several amendments in this rule change to increase its requirements for initial listing securities and help assure adequate liquidity for listed securities. In addition to the changes described above, the Exchange proposes to revise its initial listing criteria to exclude "Restricted Securities", as defined below, from the Exchange's calculations of a company's Publicly Held Shares,⁸ Market Value⁹ of Publicly Held Shares,

and Round Lot Holders¹⁰ ("Initial Liquidity Calculations"). To do so, the Exchange proposes to add new definitions to define "Restricted Securities", "Unrestricted Publicly Held Shares" and "Unrestricted Securities".¹¹ The Exchange is not proposing to change the requirements for continued listing purposes at this time, but believes that these heightened initial listing requirements will result in enhanced liquidity for the companies that satisfy them on an ongoing basis.¹² Further, the Exchange is not proposing to adopt the proposed initial listing requirements as it relates to Closed-End Funds, but rather to keep its initial listing requirements more closely aligned to another exchange.¹³ Each proposed change is described in more detail below.

I. Restricted Securities

The Exchange is proposing to modify its initial listing standards to exclude securities subject to resale restrictions from its Initial Liquidity Calculations. Currently, securities subject to resale restrictions are included in the Exchange's Initial Liquidity Calculations, however, such securities are not freely transferrable or available for outside investors to purchase and therefore do not truly contribute to a security's liquidity upon listing. Because the current Initial Liquidity Calculations include Restricted Securities, a security with a substantial number of Restricted Securities could satisfy the Exchange's initial listing requirements related to liquidity and list on the Exchange, even though there could be few freely tradable shares, resulting in a security listing on the Exchange that is illiquid. The Exchange is concerned because illiquid securities

may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

To address this concern, the Exchange is proposing to adopt a new definition of "Restricted Securities" under Exchange Rule 14.1(a)(24), which includes any securities subject to resale restrictions for any reason, including Restricted Securities (1) acquired directly or indirectly from the issuer or an affiliate of the issuer in unregistered offerings such as private placements or Regulation D offerings;¹⁴ (2) acquired through an employee stock benefit plan or as compensation for professional services;¹⁵ (3) acquired in reliance on Regulation S, which cannot be resold within the United States;¹⁶ (4) subject to a lockup agreement or a similar contractual restriction;¹⁷ or (5) considered "restricted securities" under Rule 144 of the Securities Act of 1933.¹⁸ The Exchange is also proposing to adopt a new definition of "Unrestricted Securities" under proposed Rule 14.1(a)(36), which means securities that are not Restricted Securities. In connection with these amendments, the Exchange is proposing to renumber the remaining provisions of Rule 14.1(a) to maintain an organized rule structure.

The Exchange believes that these proposed amendments to the listing rules will enhance its listing criteria and better protect investors by helping to ensure that securities listed on the Exchange are liquid and have sufficient investor interest to support an exchange listing. Further, the proposed

¹⁰ See Exchange Rule 14.1(a)(25).

¹¹ As discussed further below, these proposed amendments to help assure adequate liquidity for listed securities are very similar to amendments to Nasdaq's proposed listing standards that have received Commission approval. See Securities Exchange Act Release Nos 85503 (April 3, 2019) 84 FR 14172 (April 9, 2019) (SR-NASDAQ-2019-009) (Notice of Filing of Proposed Rule Change To Revise the Exchange's Initial Listing Standards Related to Liquidity) and 86314 (July 5, 2019) 84 FR 33102 (July 11, 2019) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 3, To Revise the Exchange's Initial Listing Standards Related to Liquidity).

¹² Exchange staff may apply additional and more stringent criteria to a listed company that satisfies all of the continued listing requirements but where there are indications that there is insufficient liquidity in the security to support fair and orderly trading. In such circumstances, the Exchange would typically first allow the company to provide and implement a plan to increase its liquidity in the near term. See Exchange Rule 14.2.

¹³ See section 101(g) of the NYSE American LLC ("NYSE American" Company Guide).

¹⁴ See e.g., 17 CFR 230.144(a)(3)(i) and (ii).

¹⁵ See e.g., 17 CFR 230.701(g), which states that securities issued pursuant to certain compensatory benefit plans and contracts relating to compensation are considered restricted securities.

¹⁶ See 17 CFR 230.144(a)(3)(v), which states that securities of domestic issuers acquired in a transaction in reliance on Regulation S are considered restricted securities.

¹⁷ Securities issued in such transactions would typically include a "restrictive" legend stating that the securities cannot be freely resold unless they are registered with the SEC or in a transaction exempt from the registration requirements, such as the exemption available under Rule 144.

¹⁸ See generally Securities and Exchange Commission Investor Publications, Rule 144: Selling Restricted and Control Securities (January 16, 2013), available at: <https://www.sec.gov/reportspubs/investorpublications/investorpubsrule144.htm>. The Exchange would consider a security as subject to a resale restriction until any restrictive legends are removed, even if a safe harbor is available that permits the sale of the security at an earlier date.

³ See Exchange Rule 14.1(a)(25).

⁴ See Exchange Rule 14.1(a)(19).

⁵ 17 CFR 240.3a51-1(g).

⁶ See Rule 14.9(b)(1)(A).

⁷ See generally Nasdaq Listing Rules Series 5000, 5200, 5300 and 5500 as it pertains to the initial listing requirements designed to help assure adequate liquidity for listed securities. See Nasdaq Listing Rule 5505(a)(1)(B) and IM-5505-2 as it pertains to the alternative minimum \$4 price requirement.

⁸ See Exchange Rule 14.1(a)(22).

⁹ See Exchange Rule 14.1(a)(19).

amendments to Rule 14.1(a) are substantively identical to Nasdaq Rules 5005(a)(38) (definition of Restricted Security) and 5005(a)(47) (definition of Unrestricted Securities).

A. Publicly Held Shares

The Exchange is proposing to modify its initial listing requirements related to Publicly Held Shares so that they are based only on shares of Unrestricted Securities. A company is required to have a minimum number of Publicly Held Shares in order to list its primary equity securities (including American Depositary Receipts or “ADRs”)¹⁹ on all tiers of the Exchange. A company is also

required to have a minimum number of Publicly Held Shares in order to list its preferred stock or secondary classes of common stock as Tier I or Tier II securities on the Exchange. Currently, Exchange Rule 14.1(a)(22) defines “Publicly Held Shares” as “shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. Determinations of beneficial ownership in calculating Publicly Held Shares shall be made in accordance with Rule 13d-3 under the Act.” As discussed above, the current definition of Publicly Held Shares does not exclude securities

subject to resale restrictions, which may result in a security with limited liquidity satisfying the Exchange’s initial listing requirements related to Publicly Held Shares and qualifying to list on the Exchange.

The Exchange proposes adding a new definition of “Unrestricted Publicly Held Shares” under Exchange Rule 14.1(a)(35), which would be defined as Publicly Held Shares excluding the newly defined “Restricted Securities.” The Exchange proposes to revise references to “Publicly Held Shares” to “Unrestricted Publicly Held Shares” in the following rules:

Rule No.	Tier	Security type	Current required number of publicly held shares
14.8(b)(1)(B)	Tier I	Primary Equity Securities	At least 1,100,000 Shares.
14.8(d)(1)(A)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least 200,000 Shares.
14.9(b)(1)(B)	Tier II	Primary Equity Securities	At least 1,000,000 Shares.
14.9(c)(1)(C)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least 200,000 Shares.

As a result, only securities that are freely transferrable will be included in the calculation of Publicly Held Shares to determine whether a company satisfies the Exchange’s initial listing criteria under these rules. The Exchange believes that excluding Restricted Securities will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors.

In addition to the above, the Exchange proposes to revise Exchange Rule 14.3(a)(7) to reflect the change to “Unrestricted Publicly Held Shares.”²⁰ The Exchange also proposes revising 14.3(c)(2) to state that in considering whether an ADR satisfies the initial listing requirements, the Exchange will consider the Unrestricted Publicly Held Shares of the underlying security, and that in determining whether shares of

the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below. The Exchange notes that the proposed amendments to the Publicly Held Share requirements are very similar to existing listing standards on Nasdaq.²¹

B. Market Value of Publicly Held Shares

The Exchange is proposing to modify its initial listing requirements related to Market Value of Publicly Held Shares so that it is based only on Unrestricted Shares. A company is required to have a minimum Market Value of Publicly Held Shares in order to list its primary equity securities (including ADRs) on both tiers of the Exchange. A company is also required to have a minimum

Market Value of Publicly Held Shares in order to list its preferred stock or secondary classes of common stock as Tier I or Tier II securities on the Exchange. The calculation of “Market Value of Publicly Held Shares” does not exclude stock subject to resale restrictions. As discussed above, Restricted Securities may not contribute to liquidity and therefore the current calculation of Market Value of Publicly Held Shares may result in a security with limited true liquidity satisfying the listing requirements related to the Market Value of Publicly Held and qualifying to list.

The Exchange proposes revising its initial listing requirements so that they are based on the Market Value of Publicly Held Shares, and therefore exclude Restricted Securities, in the following rules:

Rule No.	Market tier	Security type	Current required market value
14.8(b)(2)(B)(iii)	Tier I	Primary Equity Securities	At least \$18 million (Equity Standard).
14.8(b)(2)(C)(ii)	Tier I	Primary Equity Securities	At least \$20 million (Market Value Standard).
14.8(b)(2)(A)(iii)	Tier I	Primary Equity Securities	At least \$8 million (Income Standard).
14.8(b)(2)(D)(ii)	Tier I	Primary Equity Securities	At least \$20 million (Total Assets/Total Revenue Standard).
14.8(d)(1)(B)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least \$4 million.
14.9(b)(2)(A)(ii)	Tier II	Primary Equity Securities	At least \$15 million (Equity Standard).

¹⁹Exchange Rule 14.1(a)(21) defines “Primary Equity Security” as “a Company’s first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depositary Receipts (“ADRs”) or Shares (“ADSS”).”

²⁰Rule 14.3(a)(7) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

²¹The proposed changes to Rules 14.3(a)(7) and 14.3(c)(2) are substantively identical to Nasdaq Rules. See e.g., Nasdaq Listing Rules 5205(g) and 5215(b).

Rule No.	Market tier	Security type	Current required market value
14.9(b)(2)(B)(iii)	Tier II	Primary Equity Securities	At least \$15 million (Market Value Standard).
14.9(b)(2)(C)(iii)	Tier II	Primary Equity Securities	At least \$5 million (Net Income Standard).
14.9(c)(1)(D)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least \$3.5 million.

As discussed above, the Exchange believes that excluding Restricted Securities from the calculation of Market Value of Publicly Held Shares will better reflect the liquidity of, and investor interest in, a security and therefore will better protect investors. Specifically, Market Value of Publicly Held Shares is an indication of the size and investor interest in a company. When Restricted Securities are included in those calculation, a company could technically meet the Exchange’s requirement without actually having sufficient investor interest, resulting in a security that is illiquid. Less liquid securities may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices and a company’s Market Value of Publicly Held Shares.

The Exchange notes that the proposed amendments as it relates to the Market Value of Publicly Held Shares referenced in the table above are very similar to existing listing standards on Nasdaq.²²

The Exchange also proposes to revise Rule 14.3(a)(7) to reflect that the computation for Market Value of

Unrestricted Publicly Held Shares shall be as of the date of the application of the company for all market tiers.²³ This proposed change is substantively identical to Nasdaq Rule 5205(g). Lastly, the Exchange proposes revising Rule 14.3(c)(2) to state that in considering whether an ADR satisfies the initial listing requirements, the Exchange will consider the Market Value of Unrestricted Publicly Held Shares of the underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer’s home country market, as discussed below. This change is substantively identical to Nasdaq Rule 5215(b).

C. Round Lot Holders

The Exchange is proposing to revise the listing criteria related to the minimum number of Round Lot Holders for companies seeking to initially list primary equity securities (including ADRs), warrants, preferred stock, and secondary classes of common stock on the Exchange so that they are based on

holders of Unrestricted Securities. Currently, the Exchange defines a “Round Lot Holder”²⁴ as “a holder of a Normal Unit of Trading”²⁵ and notes that “beneficial holders will be considered in addition to holders of record.” The Exchange defines a “Round Lot or normal unit of trading” as “100 shares of a security unless, with respect to a particular security, the Exchange determines that a normal unit of trading shall constitute other than 100 shares.” A company is required to have a minimum number of Round Lot Holders in order to list securities on the Exchange. While this is another measure of liquidity designed to help assure that there will be sufficient investor interest and trading to support price discovery once a security is listed, as noted above, under existing rules, all the shares held by a holder could be Restricted Securities that do not contribute to liquidity.

To address this concern, the Exchange is proposing to revise the definition of “Round Lot Holder” to mean a holder of a normal unit of trading of Unrestricted Securities.²⁶ This change will impact the following rules:

Rule No.	Market tier	Security type	Current required number of round lot holders
14.8(b)(1)(C)	Tier I	Primary Equity Securities	At least 400 Round Lot Holders.
14.8(c)(4)	Tier I	Warrants	At least 400 Round Lot Holders.
14.8(d)(1)(D)	Tier I	Preferred Stock and Secondary Classes of Common Stock.	At least 100 Round Lot Holders.
14.9(b)(1)(C)	Tier II	Primary Equity Securities	At least 300 Round Lot Holders.
14.9(c)(1)(B)	Tier II	Preferred Stock and Secondary Classes of Common Stock.	At least 100 Round Lot Holders.
14.9(d)(1)(D)	Tier II	Warrants	At least 400 Round Lot Holders.

As a result of these changes, a holder of only Restricted Securities would not be considered in the Round Lot Holder count. The Exchange believes that these amendments will help ensure adequate distribution and investor interest in a listed security, which will result in a more liquid trading market and which

will better protect investors. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively

small amount of trading activity can have an inordinate effect on market prices. The Exchange notes that these changes are very similar to listing standards on Nasdaq.²⁷

In addition to the above, the Exchange also proposes revising Rule 14.3(c)(2) to state that in considering whether an

²² See e.g., the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(b)(1)(B) (Equity Standard), 5505(b)(2)(C) (Market Value Standard), 5505(b)(3)(C) (Net Income Standard), and 5510(a)(4) (standard applicable to Preferred Stock or Secondary Classes of Common Stock)).

²³ Rule 14.3(a)(7) currently states that “The computation of Publicly Held Shares and Market Value of Publicly Held Shares shall be as of the date of application of the Company.”

²⁴ See Exchange Rule 14.1(a)(25).

²⁵ See Exchange Rule 14.1(a)(24).

²⁶ The Exchange notes that the proposed definition is very similar to the definition of “Round Lot Holder” provided in Nasdaq Rule 5005(a)(41).

²⁷ See e.g., Nasdaq Listing Rule 5505(a)(3), 5510(a)(2) and 5515(a)(4).

ADR satisfies this proposed change that determination of Round Lot Holders be based on holders of Unrestricted Securities, the Exchange will consider whether Round Lot Holders of the underlying security hold Unrestricted Shares of that underlying security, and that in determining whether shares of the underlying security are restricted for this purpose, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market, as discussed below. The Exchange will also apply the new minimum value requirement for Round Lot Holders to the underlying security, as proposed below, in addition to the minimum number of Round Lot Holders required by the applicable tier that the company is seeking to list on. The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

D. American Depository Receipts

The Exchange proposes to revise Rule 14.3(c)(2) to specify how these new requirements apply to ADRs.

Specifically, as under the current rule for calculating Publicly Held Shares, Market Value of Publicly Held Shares, and Round Lot Holders, the Exchange will continue to consider the underlying security in calculating the Unrestricted Publicly Held Shares and Market Value of Unrestricted Publicly Held Shares and in calculating the new definition of a Round Lot Holder. In determining whether shares of the underlying security are "restricted" for these purposes, only restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market would result in those securities being considered restricted for purposes of the proposed rules. Thus, if the restrictions provided as examples in the new definition of "Restricted Securities" would restrict the underlying security from being freely sold or tradable on its home country market, the Exchange would also consider such restrictions when calculating "Unrestricted Publicly Held Shares." The Exchange believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depository bank and represented by the ADR. For this reason, existing Rule 14.3(c)(2) currently looks to the underlying security when calculating Publicly Held Shares, Market Value of

Publicly Held Shares, Round Lot and Public Holders²⁸ and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares, and Round Lot Holders. Excluding securities that are only restricted from resale or trading in the United States would not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S.²⁹ Moreover, applying the new definition of Restricted Securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of Restricted Securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

In addition to the above, the Exchange proposes to revise the reference to Form S-12 in Rule 14.3(c)(2)³⁰ to Form F-6 in order to refer to the current form required by the Commission to register ADRs under the Securities Act of 1933.³¹

II. Minimum Value Requirements for Holders

The Exchange is also proposing to revise the listing rules related to Round Lot Holders listed in Part I.C. above to impose a new requirement related to the minimum investment amount held by shareholders. Under the current definition of a Round Lot, a shareholder may be considered a Round Lot Holder by holding exactly 100 shares, which would be worth only \$400 in the case of a stock that is trading at the minimum bid price of \$4 per share. The Exchange believes that this minimal investment is not an appropriate representation of investor interest to support a listing on a national securities exchange. To address this concern, the Exchange proposes to require that for initial listing at least 50% of a company's required Round Lot Holders must each hold

²⁸ See Exchange Rule 14.1(a)(23).

²⁹ For example, the underlying security may not be eligible to trade in the U.S., but that would not cause all shares of that security to be considered restricted if they are freely tradable on the foreign issuer's home country market.

³⁰ Proposed Exchange Rule 14.3(c)(2) is very similar to Nasdaq Rule 5215(b).

³¹ Securities Exchange Act Release No. 34-19612 (March 18, 1983), 48 FR 12346 (March 24, 1983).

Unrestricted Securities with a Market Value of at least \$2,500. The Exchange does not propose to impose this requirement on initial listings of warrants, however, because warrants do not have a minimum price requirement and may have little value at the time of issuance.³²

The Exchange believes that adopting this amendment will help ensure that a majority of the required minimum number of unrestricted shareholders hold a meaningful value of Unrestricted Securities and that a company has sufficient investor interest to support an exchange listing. The Exchange also notes that the proposed rule is very similar to Nasdaq Rule 5505(a)(3) and 5510(a)(2).

III. Average Daily Trading Volume

The Exchange is proposing to adopt an additional initial listing criteria for primary equity securities (including ADRs), preferred stock, and secondary classes of common stock, previously trading OTC in the United States. The new rules will require such securities to have a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000 shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.*, at least 16 days). The Exchange believes that this will help ensure a liquid trading market, promote price discovery and establish an appropriate market price for listed securities.

The Exchange is proposing to implement this new requirement by making additional amendments to:

- Exchange Rule 14.8(b)(1) to add new Rule 14.8(b)(1)(D) as it pertains to Tier I primary equity securities;
- Exchange Rule 14.8(d)(1) to add new Rule 14.8(d)(1)(F) as it pertains to Tier I preferred stock and secondary classes of common stock;
- Exchange Rule 14.9(b)(1) to add new Rule 14.9(b)(1)(E) (and re-letter existing Rule 14.9(b)(1)(E) to (F)) as it pertains to Tier II primary equity securities;
- Exchange Rule 14.9(c)(1) to add new Rule 14.9(c)(1)(F)³³ as it pertains to Tier II preferred stock and secondary classes of common stock;
- In connection with the foregoing amendments, the Exchange is also

³² 15 U.S.C. 77r(b).

³³ Rule 14.1(a)(21) defines the term "Primary Equity Security" as a "Company's first class of Common Stock, Ordinary Shares, Shares or Certificates of Beneficial Interest of Trust, Limited Partnership Interests or American Depository Receipts ("ADRs") or Shares ("ADSS")."

proposing to revise the cross-references in Rule 14.8(d)(1) and Rule 14.9(c)(1) to add new Rules 14.8(d)(1)(F) and 14.9(c)(1)(F), respectively.

The Exchange notes that the average daily trading volume requirement is very similar requirements on Nasdaq.³⁴

As noted above, the average daily trading volume requirement will also apply to ADRs. Currently, the Exchange considers the underlying security of an ADR when determining annual income from continuing operations, Publicly Held Shares, Market Value of Publicly Held Shares, stockholders' equity, Round Lot or Public Holders, operating history, Market Value of listed securities, and total revenue. The Exchange is proposing amend 14.3(c)(2) to state that the average daily trading volume of the underlying security of an ADR will be considered in the Exchange's computations for this new requirement. The Exchange would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. The Exchange believes that this will help demonstrate adequate investor interest in the foreign issuer and the underlying security, which will help promote price discovery and establish an appropriate market price for the ADR.³⁵ This proposed amendment is substantively identical to existing Nasdaq Rule 5215(b).

The Exchange is proposing to adopt an exemption from the proposed average daily trading volume requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. The Exchange believes that the sale of securities in an underwritten public offering provides an additional basis for believing that a liquid trading market will likely develop for such securities after listing, since the offering process is designed to promote appropriate price discovery. Moreover, the underwriters in a firm commitment underwritten public offering will also generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. For these reasons, in part, the Exchange's rules already provide similar

exemptions in other situations involving a firm commitment underwritten offering.³⁶ The Exchange believes that the process of a firm commitment underwritten offering similarly supports an exception from the proposed average daily trading volume requirement. Finally, the Exchange believes that the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering. In that regard, the Exchange notes that the minimum \$4 million offering would be sufficient to satisfy the Exchange's one million share public float requirement at the minimum \$4 price for listing for Tier II securities. This exemption will be included in new Rules 14.8(b)(1)(D), 14.8(d)(1)(F), 14.9(b)(1)(E), and 14.9(c)(1)(F).³⁷

IV. Minimum Price Requirement

Rule 3a51-1³⁸ provides that "penny stock" means any equity security other than securities that meet certain exclusions. Rule 3a51-1(g) provides an exclusion for a security if its issuer has either "[n]et tangible assets (*i.e.*, total assets less intangible assets and liabilities) in excess of \$2,000,000, if the issuer has been in continuous operation for at least three years, or \$5,000,000, if the issuer has been in continuous operation for less than three years" or "[a]verage revenue of at least \$6,000,000 for the last three years." When the Commission made changes to Rule 3a51-1 concerning exchange-listed securities, it specifically noted that it did not intend to foreclose reliance on the other exclusions available in Rule 3a51-1, including the exclusion available in Rule 3a51-1(g).³⁹ Proposed Rule 14.9(b)(1)(A)(ii) would only permit a company seeking to list a Tier II security to list with a \$2 or \$3 price if it satisfies the net tangible assets or

revenue test of Rule 3a51-1(g) and, as such, securities listing under the proposed rule would not be penny stocks at the time of their listing. A company that qualifies for initial listing only under the proposed requirement could become a "penny stock" if it fails the net tangible assets and revenue tests after listing and does not satisfy any of the other exclusions from being a penny stock. In order to assist brokers' and dealers' compliance with the requirements of the Penny Stock Rules, the Exchange will monitor companies listed under the proposed alternative and publish a list of any company that initially listed under that requirement, which does not then meet the requirements of Rule 3a51-1(g), described above, or any of the other exclusions from being a penny stock contained in Rule 3a51-1.⁴⁰ Such list will be updated on a daily basis.

The proposed alternative price test will be based on the BZX Official Closing Price⁴¹ in the security.⁴² The Exchange notes that the process for determining the BZX Official Closing Price is similar to such process on Nasdaq for determining the Nasdaq Official Closing Price.⁴³ The Exchange also proposes that the required closing price must be achieved for at least five consecutive business days before approval of the listing application. The Exchange may extend the minimum five-day compliance period required to satisfy these tests based on any fact or circumstance, including the margin of compliance, the trading volume, the trend of the security's price, or information or concerns raised by other regulators concerning the trading of the security. If a security obtains a \$4 closing price for five consecutive business days and, at the same time

⁴⁰ The Exchange believes that the other exclusion most likely to be implicated would be Rule 3a51-1(d), 17 CFR 240.3a51-1(d), which provides an exclusion from the definition of a penny stock for a security with a minimum bid price of \$5. Note, however, that if a Company obtains a \$4 minimum bid price at a time when it meets all other initial listing requirements, the Exchange would no longer consider the company as having listed under the proposed alternative standard.

⁴¹ See BZX Rule 11.23(a)(3). The Exchange notes that the process for determining the BZX Official Closing Price is similar to the process on Nasdaq for determining the Nasdaq Official Closing Price.

⁴² As provided in Exchange Rule 11.23(c)(2)(B), "[f]or a BZX-listed corporate security, the Closing Auction price will be the BZX Official Closing Price. In the event that there is no Closing Auction for a BZX-listed corporate security, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade. See Exchange Rule 11.23(a)(9) for the definition of 'Final Last Sale Eligible Trade'."

⁴³ See Nasdaq Rule 4754. The Exchange notes that pursuant to Nasdaq Rule 4754(b)(5), Nasdaq may apply auxiliary procedures for the Closing Cross to ensure a fair and orderly market, where no such provision is available on BZX.

³⁴ See *e.g.*, to Nasdaq Rule 5505(a)(5), and 5510(a)(6).

³⁵ ADR shares trade separately from the underlying securities, and often have slightly different values. However, ADR share values usually track closely with the value of the underlying security

³⁶ For example, Exchange Rule 14.2(c)(3)(D) provides an exemption from the requirements applicable to a company that was formed by a reverse merger if the company completes a firm commitment underwritten public offering where the gross proceeds to the company will be at least \$40 million.

³⁷ The proposed exemptions are very similar to those on Nasdaq. See *e.g.*, Nasdaq Rule 5505(a)(5) and 5510(a)(6).

³⁸ 17 CFR 240.3a51-1.

³⁹ See Securities Exchange Act Release No. 49037 (January 8, 2004), 69 FR at 2535 (January 16, 2004) (text at footnote 41) ("In addition, we note that any security that satisfies one of the other exclusions in Rule 3a51-1 will not be a penny stock even if it fails to satisfy any of the proposed conditions for reported securities or for other exchange registered securities discussed above.")

satisfies all other initial listing criteria, it will no longer be considered as having listed under the alternative requirement. In such case the security will satisfy the requirements for the exclusion contained in Rule 3a51-1(a)(2) and no longer be monitored for compliance with the other exclusions from the definition of a penny stock.

The Exchange notes that the proposal to adopt an alternative to the minimum \$4 price requirement for companies seeking to list Tier II securities on the Exchange is very similar to rules proposed by Nasdaq considered and approved by the Commission.⁴⁴

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.⁴⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁴⁶ 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.

As described below, the Exchange believes that the proposed rule changes in this filing are consistent with the investor protection requirement of Section 6(b)(5) of the Act because they each will enable the Exchange to help ensure that issuers seeking to list securities on the Exchange have sufficient public float, investor base, and trading interest likely to generate depth and liquidity. Illiquid securities may trade infrequently, in a more volatile manner and with a wider bid-

ask spread, all of which may result in trading at a price that may not reflect their true market value. Less liquid securities also may be more susceptible to price manipulation, as a relatively small amount of trading activity can have an inordinate effect on market prices.

I. Restricted Securities

The proposed amendments will adopt new definitions of “Restricted Securities” and “Unrestricted Securities” in order to exclude securities that are subject to resale restrictions from the Exchange’s Initial Liquidity Calculations. The Exchange believes that these amendments will bolster the Exchange’s quantitative shareholder requirements, and as a result, better reflect and safeguard the liquidity of a security. The Exchange believes that adopting the new definitions of Restricted Securities and Unrestricted Securities will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because securities subject to resale restrictions are not freely transferrable and therefore excluding Restricted Securities from the Exchange’s Initial Liquidity Calculations will help ensure that the Exchange lists only companies with liquid securities and sufficient investor interest to support an exchange listing meeting the Exchange’s listing criteria, which will better protect investors. Further, the proposed definitions are substantively identical to Nasdaq Rules 5005(a)(38) (definition of Restricted Security) and 5005(a)(47) (definition of Unrestricted Securities).

A. Publicly Held Shares

The proposed amendments will adopt a new definition of “Unrestricted Publicly Held Shares” and change the existing definition of “Public Shareholders” to “Unrestricted Public Shareholders” so that they each exclude Restricted Securities. The Exchange also proposes to revise its initial listing standards to conform the minimum number of Publicly Held Shares and Unrestricted Public Shareholders to the new or revised definitions. The Exchange believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and is thus suitable for listing

and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

The Exchange notes that the proposed amendments to the Publicly Held Share requirements are very similar to existing listing standards on Nasdaq.⁴⁷

B. Market Value of Publicly Held Shares

The proposed amendments will revise the definition of “Market Value” to exclude Restricted Securities from the calculation of Market Value of Unrestricted Publicly Held Shares as well as revise the Exchange’s initial listing standards to conform the minimum Market Value to the new definition. The Exchange believes that these changes will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest because it will help ensure that a security to be listed has adequate liquidity and investor interest and is thus suitable for listing and trading on an exchange, which will reduce trading volatility and price manipulation, thereby protecting investors and the public interest.

The Exchange notes that the proposed amendments as it relates to the Market Value of Publicly Held Shares are substantively identical to existing listing standards on Nasdaq.⁴⁸

C. Round Lot Holders

The proposed amendments will exclude Restricted Securities from the calculation of the number of Round Lot Holders required to meet the Exchange’s initial listing criteria by adopting a new definition of “Round Lot Holder” which will exclude Restricted Securities. The Exchange believes that this amendment will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping ensure adequate distribution, shareholder interest and a liquid trading market of a security. The Exchange notes that these changes are very similar

⁴⁴ See Securities Exchange Act Nos. 66159 (January 13, 2012) 77 FR 3021 (January 20, 2012) (SR-NASDAQ-2012-002) (Notice of Filing of Proposed Rule Change To Adopt an Alternative to the \$4 Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 or \$3, if Certain Other Listing Requirements Are Met); 66830 (April 18, 2012) 77 FR 24549 (April 24, 2012) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, To Adopt an Alternative to the \$4 Per Share Initial Listing Bid Price Requirement for the Nasdaq Capital Market of Either \$2 Closing Price Per Share or \$3 Closing Price Per Share, if Certain Other Listing Requirements are Met).

⁴⁵ 15 U.S.C. 78f(b).

⁴⁶ 15 U.S.C. 78f(b)(5).

⁴⁷ See e.g., the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(a)(2) and 5510(a)(3)).

⁴⁸ See e.g., the listing standards on the Nasdaq Capital Market (Nasdaq Listing Rules 5505(b)(1)(B) (Equity Standard), 5505(b)(2)(C) (Market Value Standard), 5505(b)(3)(C) (Net Income Standard), and 5510(a)(4) (standard applicable to Preferred Stock or Secondary Classes of Common Stock)).

to listing standards on Nasdaq,⁴⁹ and the proposed definition of Round Lot Holder is substantively identical to Nasdaq Rule 5005(a)(41).

D. American Depository Receipts

The proposed amendments will modify the Exchange's rules to state that when considering the security underlying an ADR, the Exchange will only consider restrictions that prohibit the resale or trading of the underlying security on the foreign issuer's home country market. However, any restrictions, including those provided as examples in the new definition of "Restricted Securities," which would restrict the underlying security from being freely sold or tradable on its home country market would be considered by the Exchange when calculating "Unrestricted Publicly Held Shares." The Exchange believes that this is appropriate because the purpose of the Initial Liquidity Calculations, and the proposed changes described herein, is to establish investor interest in the foreign issuer and ensure adequate liquidity and distribution of the foreign issuer's underlying security on its home country market, which is held by the depository bank and represented by the ADR. For this reason, existing Rule 14.3(c)(2) currently looks to the underlying security when calculating Publicly Held Shares, Market Value of Publicly Held Shares, Round Lot and public holders and it is similarly appropriate to consider whether or not the underlying security is freely tradable in its home country market when determining Unrestricted Publicly Held Shares, Market Value of Unrestricted Publicly Held Shares, and Round Lot Holders. Excluding securities that are only restricted from resale or trading in the United States would be not be an appropriate measure of investor interest in or liquidity of the underlying security because the underlying security will not be listed or trading in the U.S. Moreover, applying the new definition of Restricted Securities to securities trading on a foreign market, if the securities trading on the home country market are not already restricted by the examples set forth in the new definition of Restricted Securities, would unduly impose the requirements of a U.S. national securities exchange on those securities, which will not be listed in the U.S. For the foregoing reasons, the Exchange believes that this provision will promote just and equitable principles of trade, remove impediments to and perfect the

mechanism of a free and open market and a national market system, and protect investors and the public interest.

Further, the Exchange believes that this provision is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. While the Exchange's Initial Liquidity Calculations for ADRs would be calculated differently than other securities, these differences are not unfair because they recognize the unique structure of ADRs, as already reflected in the existing treatment of ADRs under the Exchange's rules, where the Exchange looks to the underlying security in order to ensure sufficient investor interest and adequate liquidity and distribution of the foreign issuer's underlying security, which is represented by the ADR.

The Exchange notes that this proposed change is substantively identical to existing Nasdaq Rule 5215(b).

II. Minimum Value Requirements for Holders

The Exchange proposes adopting a new requirement that at least 50% of a company's Round Lot Holders hold Unrestricted Securities with a Market Value of at least \$2,500. The Exchange notes that the proposed \$2,500 threshold is from 6.5 times to 12.5 times larger than the existing minimum investment, and the Exchange believes that this increased amount is a more appropriate representation of genuine investor interest in the company and will make it more difficult to circumvent the requirement through share transfers for no value. As such, the Exchange believes that these amendments will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by requiring more than half of the required number of shareholders hold a more significant investment in the company, and that the company will therefore have an adequate distribution, shareholder interest and a liquid trading market of a security.

The Exchange also notes that the proposed rule is very similar to Nasdaq Rules.⁵⁰

III. Average Daily Trading Volume

The proposed amendments will generally impose a minimum average daily trading volume over the 30 trading days prior to listing of at least 2,000

shares a day (including trading volume of the underlying security on the primary market with respect to an ADR), with trading occurring on more than half of those 30 days (*i.e.*, at least 16 days). This will apply to primary equity securities, preferred stock, secondary classes of common stock and ADRs previously trading OTC in the United States that apply to list securities on the Exchange. The Exchange believes this proposed change will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by helping to assure adequate liquidity and price discovery of a security. The Exchange believes that companies trading at least 2,000 shares a day over a period of 30 trading days prior to listing, with trading occurring on more than half of those 30 days, can demonstrate sufficient investor interest to support sustained trading activity when listed on a national stock exchange.

The proposed rule change will provide a limited exemption to this requirement for securities (including ADRs) listed in connection with a firm commitment underwritten public offering of at least \$4 million. The Exchange believes that it is consistent with the protection of investors and the public interest, and not unfairly discriminatory, to exempt from the proposed average daily trading volume requirement securities satisfying this exemption because underwriters facilitate appropriate price discovery and will generally make a market in the securities for a period of time after the offering, assisting in the creation of a liquid trading market. Further, the Exchange believes that this exemption is consistent with the protection of investors and the public interest, and not unfairly discriminatory, because the proposed minimum \$4 million firm commitment underwritten public offering is large enough to represent a fundamental change in how the company will trade following the offering, such that the prior trading volume will not be representative of the volume following the offering.

Under the proposed rule, the Exchange would consider trading in the security underlying an ADR on the foreign issuer's primary market together with the average daily trading volume of the ADR in the U.S. OTC market in determining whether a foreign issuer seeking to list ADRs satisfies the requirement. The Exchange believes that this distinction is not unfairly discriminatory because the trading

⁴⁹ See *e.g.*, Nasdaq Listing Rule 5505(a)(3) and 5510(a)(2).

⁵⁰ See *e.g.*, Nasdaq Listing Rules 5505(a)(3) and 5510(a)(2).

volume in the underlying security on the foreign issuer's primary market represents interest in the foreign issuer's security and that interest is reasonably likely to be indicative of investor interest in the ADR.

The proposed rule is very similar to Nasdaq Rules.⁵¹

IV. Minimum Price Requirement

The proposed rule change will adopt a \$2 and \$3 initial listing price alternative for Tier II securities listed on the Exchange that is identical to a listing requirement on Nasdaq, which the Commission has already determined is consistent with these requirements.⁵²

In this proposed rule amendment, the Exchange proposes to determine compliance with the new alternative based on a security's BZX Official Closing Price, instead of its bid price. The Exchange believes that this change will protect investors and the public interest by ensuring that a trade, reflecting the value of the security to both the buyer and seller, has taken place at the required price. The Exchange also proposes to require that a company meet the applicable closing price for at least five consecutive business days, which will protect investors and the public interest by helping to ensure that the company has achieved more than just fleeting compliance. In addition, the Exchange is providing additional information clarifying how it will determine compliance with the price requirements and how it will review a security that initially listed under the proposed alternative to determine if that security subsequently achieves a \$4 price and meets the other initial listing requirements. The Exchange believes that this additional transparency will also help protect investors and the public interest.

The Exchange believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if the Exchange was concerned about the ability of a Company to maintain compliance with the continued listing price or believed there were public interest concerns leading to the company's low stock price.

The Exchange believes that the proposed price requirement is sufficient to protect investors and would exercise its discretionary authority to deny initial listing if the Exchange was concerned about the ability of the company to maintain compliance with

the continued listing price or believed there were public interest concerns leading to the company's low stock price. Moreover, given that these companies have an exchange-listing available to them, prohibiting listing on the Exchange does not serve to protect investors and the Exchange believes that investors would be at least as well protected by having these companies instead listed on the Exchange, where they would be subject to oversight by the Exchange's regulatory staff. As such, the Exchange believes that the proposed rule change, as amended, is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, as noted above, the proposed rule change would adopt the identical initial listing price requirement on Nasdaq of \$2 or \$3 depending on the security's other characteristics. As such, the Exchange believes that its listing requirements would remain substantially similar to those of Nasdaq. In addition, as noted, the proposed rule change, as amended, would require that any security qualifying under this new price alternative also meet the requirements of Rule 3a51-1(g)⁵³ and that these securities therefore would not be considered "penny stocks" under the Act at the time of their listing. To the extent that a security no longer qualified for the exclusion under Rule 3a51-1(g), or any of the other exclusions in Rule 3a51-1, the Exchange would notify the public by including the security in a list published on the Exchange's website.

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 Exchange believes the proposed rule change will not impose any unnecessary burden on intramarket competition as all domestic and foreign companies seeking to list primary equity securities, preferred stock, secondary classes of common stock or subscription receipts would be affected in the same manner by these changes. As discussed above, companies listing ADRs would be treated differently in some respects than companies listing other primary

equity securities, but those differences reflect the unique characteristics of ADRs and does not impose an unnecessary burden on competition.

The proposed rule changes will expand the competition for the listing of equity securities as they will enable the Exchange to compete for the listing of companies that are currently not qualified for listing on the Exchange but are qualified to list on other national securities exchanges. To the extent that companies prefer listing on a market with these proposed listing standards, other exchanges can choose to adopt similar enhancements to their requirements. As such, these changes are neither intended to, nor expected to, impose any burden on competition between exchanges.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-036 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.

⁵¹ See e.g., 5505(a)(5) and 5510(a)(6).

⁵² *Supra* note 44.

⁵³ 17 CFR 240.3a51-1(g).

All submissions should refer to file number SR-CboeBZX-2023-036. 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 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-2023-036 and should be submitted on or before July 5, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁵⁴

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-12665 Filed 6-13-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97671; File No. SR-NSCC-2022-015]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Make Certain Enhancements to the Gap Risk Measure and the VaR Charge

June 8, 2023.

On December 2, 2022, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2022-015 (the "Proposed Rule Change") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the **Federal Register** on December 21, 2022,³ and the Commission has received one comment regarding the changes proposed in the Proposed Rule Change.⁴

On January 24, 2023, pursuant to section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ On March 20, 2023, the Commission instituted proceedings, pursuant to section 19(b)(2)(B) of the Act,⁷ to determine whether to approve or disapprove the Proposed Rule Change.⁸

Section 19(b)(2) of the Act⁹ provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 96511 (Dec. 15, 2022), 87 FR 78157 (Dec. 21, 2022) (File No. SR-NSCC-2022-015) ("Notice of Filing").

⁴ Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-015/srnsc2022015.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 96740 (Jan. 24, 2023), 88 FR 5953 (Jan. 30, 2023) (SR-NSCC-2022-015).

⁷ 15 U.S.C. 78s(b)(2)(B).

⁸ Securities Exchange Act Release No. 97171 (March 20, 2023), 88 FR 17898 (March 24, 2023) (File No. SR-NSCC-2022-015).

⁹ 15 U.S.C. 78s(b)(2).

proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.¹⁰ The 180th day after publication of the Notice in the **Federal Register** is June 19, 2023.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to section 19(b)(2)(B)(ii)(II) of the Act,¹¹ the Commission designates August 18, 2023, as the date by which the

Commission should either approve or disapprove the Proposed Rule Change SR-NSCC-2022-015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-12661 Filed 6-13-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97673; File No. SR-BOX-2023-15]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Separate Fees and Rebates on Non-Auction Transactions for Options Overlying the Standard and Poor's Depository Receipts Trust

June 8, 2023.

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 May 31, 2023, BOX Exchange LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.

¹⁰ 15 U.S.C. 78s(b)(2)(B)(ii)(II).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁵⁴ 17 CFR 200.30-3(a)(12).