

comment in the **Federal Register** on September 22, 2023.⁵ On September 28, 2023, pursuant to Section 19(b)(3)(C) of the Act, the Commission temporarily suspended the proposed rule change and instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.⁶ On February 1, 2024, the Exchange withdrew the proposed rule change (SR-CboeBZX-2023-071).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99480; File No. SR-CboeBZX-2024-013]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify the Minimum Performance Standards Applicable to Primary Equity Securities Under the Lead Market Maker Program as Set forth in Rule 11.8(e)(1)(E), and To Make Corresponding Changes to Its Fee Schedule

February 6, 2024.

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 February 2, 2024, Cboe BZX Exchange, Inc. (the “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 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 modify the Minimum Performance Standards applicable to

Primary Equity Securities under the Lead Market Maker program (“LMM Program”) as set forth in Rule 11.8(e)(1)(E), and to make corresponding changes to its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5 below.

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.

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

1. Purpose

The Exchange proposes to modify the Minimum Performance Standards³ under the LMM Program as set forth in Rule 11.8(e)(1)(E) applicable to Primary Equity Securities⁴ (also referred to as “Corporate Securities”) listed on the Exchange. The Exchange is not proposing any substantive changes to the LMM Program as it relates to Exchange-Traded Products (“ETPs”) or Closed-End Funds, but is merely proposing to make changes in its Rulebook to clearly delineate the LMM Program applicable to Corporate Securities. The Exchange also proposes to make corresponding changes to its Fee Schedule. The Exchange proposes to implement these changes on February 2, 2024.⁵

³ “Minimum Performance Standards” means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. See Exchange Rule 11.8(e)(1)(E).

⁴ As defined in Rule 14.1(a), the term “Primary Equity Security” means 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”).

⁵ The Exchange initially filed the proposed fee change on February 1, 2024 (SR-Cboe-BZX-2024-012). On February 2, 2024, the Exchange withdrew that filing and submitted this proposal.

On June 2, 2014,⁶ the Exchange implemented the LMM Program on the Exchange, which provided enhanced rebates to market makers registered with the Exchange (“Market Makers”) that were also registered as a lead market maker (“LMM”) in an LMM Security and met the Minimum Performance Standards in Exchange-listed exchange-traded products (“ETPs”).⁷ On April 8, 2020, the Exchange amended the LMM Program to include Cboe-listed Primary Equity Securities and Closed-End Funds,⁸ and made corresponding changes to its Fee Schedule.⁹ Now, the Exchange proposes to modify the Minimum Performance Standards applicable to only Primary Equity Securities listed on the Exchange, and separate those Minimum Performance Standards from those applicable to Closed-End Funds in the Exchange’s rulebook.

Currently, the Minimum Performance Standards for Primary Equity Securities and Closed-End Funds include the following under Rule 11.8(e)(1)(E)(i)–(v):

- (i) Registration as a market maker in good standing with the Exchange;
- (ii) Time at the inside requirements, which, for Qualified Securities,¹⁰ require that an LMM maintain quotes at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 15% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. For Enhanced Securities,¹¹ an LMM must quote at the NBB and the NBO at least 5% of Regular Trading Hours where the security has a consolidated average daily volume

⁶ See the Securities Exchange Act Release Nos. 72020 (April 25, 2014) 79 FR 24807 (May 1, 2014) (SR-BATS-2014-015) (the “LMM Program filing”); 72333 (June 5, 2014) 79 FR 33630 (June 11, 2014) (SR-BATS-2014-019) (the “LMM Fee filing”).

⁷ See Rule 11.8(e)(1)(A).

⁸ As provided in Rule 14.8(a), the term “Closed-End Funds” means closed-end management investment companies registered under the Investment Company Act of 1940.

⁹ See Securities Exchange Act Release No. 88617 (April 10, 2020) 85 FR 21056 (April 15, 2020) (SR-CboeBZX-2020-032).

¹⁰ Qualified Securities are BZX-listed primary equity securities and closed-end funds for which LMMs are eligible to receive certain incentives, as set forth in the Exchange’s Fee Schedule, if the Minimum Performance Standards applicable to Qualified Securities are met.

¹¹ Enhanced Securities are BZX-listed primary equity securities and closed-end funds securities for which LMMs are eligible to receive certain incentives that are higher than those available for Qualified Securities, if the more stringent Minimum Performance Standards applicable to Enhanced Securities are met.

⁵ See Notice, *supra* note 3.

⁶ See Securities Exchange Act Release No. 98597 (Sept. 28, 2023), 88 FR 68822 (Oct. 4, 2023).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

equal to or greater than 500,000 shares and at least 40% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares;

(iii) Auction participation requirements, which, for a Qualified Security, require that the Opening Auction price is within 4% of the last Reference Price, as defined in Rule 11.23(a)(19), and 2% for an Enhanced Security. For a Qualified Security, such requirements provide that the Closing Auction price must be within 3% of the last Reference Price and 1% for an Enhanced Security;

(iv) Market-wide NBB and NBO spread and size requirements, which require 300 shares at both the NBB and NBO during at least 50% of Regular Trading Hours for both Qualified Securities and Enhanced Securities. For Qualified Securities, the NBBO spread of such shares must be no wider than 2% for a security priced equal to or greater than \$5 and no wider than 7% for a security priced less than \$5. For Enhanced Securities, the NBBO spread of such shares must be no wider than 1% for securities priced equal to or greater than \$5 and no wider than 2% for securities priced less than \$5; and

(v) Depth of book requirements, which, for securities priced equal to or greater than \$5 requires at least \$150,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours and, for securities priced less than \$5, at least \$50,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours. For Qualified Securities, such liquidity must be within 2% of both the NBB and NBO for securities priced equal to or greater than \$5 and within 7% of both the NBB and NBO for securities priced less than \$5. For Enhanced Securities, such liquidity must be within 1% of both the NBB and NBO for securities priced equal to or greater than \$5 and within 2% of both the NBB and NBO for securities priced less than \$5.

Now, the Exchange proposes to adopt similar Minimum Performance Standards applicable to Primary Equity Securities under proposed Rule 11.8(e)(1)(E)(i) and move the existing Minimum Performance Standards, which would be applicable only to Closed-End Funds, to proposed Rule 11.8(e)(1)(E)(ii). Specifically, the Minimum Performance Standards applicable to Primary Equity Securities would be set forth in Rule

11.8(e)(1)(E)(i)(a)–(e), as discussed below.

Proposed subparagraph (a) would require that the LMM is registered as a market maker in good standing with the Exchange and is identical to the existing requirement under Rule 11.8(e)(1)(E)(i).

Proposed subparagraph (b) would set forth the time at the inside requirements identical to existing Rule 11.8(e)(1)(E)(ii), except for the percentage of time the LMM must have quotes at the NBB and NBO.

Specifically, subparagraph (b) would provide that the time at the inside requirements, which, for Qualified Securities, require that an LMM maintain quotes at the NBB and the NBO at least 10% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 20% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. For Enhanced Securities, an LMM must quote at the NBB and the NBO at least 10% of Regular Trading Hours where the security has a consolidated average daily volume equal to or greater than 500,000 shares and at least 20% of Regular Trading Hours where the security has a consolidated average daily volume of less than 500,000 shares. Under the current structure, LMMs in Corporate Securities and Closed-End Funds that meet the Enhanced Security Minimum Performance Standards are eligible to receive higher incentives than such LMMs that meet the Qualified Security Minimum Performance Standards because such Enhanced Security Minimum Performance Standards are more stringent. As proposed, the Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards for Corporate Securities are identical, as are the proposed incentives which are discussed in further detail below. Nonetheless, the Exchange is proposing to keep the concept of Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards in the Exchange's Rulebook as the Exchange expects to modify those Minimum Performance Standards (at a later date through another proposal) so that they are not identical.

Proposed subparagraph (c) would set forth the auction participation requirements identical to existing Rule 11.8(e)(1)(E)(iii), except for the percentage requirements as it relates to Enhanced Securities for both the Opening and Closing Auction.

Specifically, subparagraph (c) would require that for a Qualified Security, the Opening Auction price is within 4% of the last Reference Price, as defined in Rule 11.23(a)(19), and 4% for an Enhanced Security. For a Qualified Security, such requirements provide that the Closing Auction price must be within 3% of the last Reference Price and 3% for an Enhanced Security. As described above, while the Exchange acknowledges that the proposed quoting requirements for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another proposal.

Proposed subparagraph (d) would set forth the market-wide NBB and NBO spread and size requirements identical to existing Rule 11.8(e)(1)(E)(iv), except that the requirements would not consider the price of the security, and that the applicable percentage requirements for both Qualified and Enhanced Securities could be different. Specifically, proposed Rule 11.8(e)(1)(E)(i)(d) would require 300 shares at both the NBB and NBO during at least 50% of Regular Trading Hours for both Qualified Securities and Enhanced Securities. For Qualified Securities, the NBBO spread of such shares must be no wider than 5%. For Enhanced Securities, the NBBO spread of such shares must be no wider than 5%. As described above, while the Exchange acknowledges that the proposed spread requirements for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another proposal.

Proposed subparagraph (e) would set forth the depth of book requirements identical to existing Rule 11.8(e)(1)(E)(v), except that the requirements would not consider the price of the security, and the applicable percentage requirements for both Qualified and Enhanced Securities could be different. Specifically, proposed Rule 11.8(e)(1)(E)(i)(E) would require at least \$50,000 of displayed posted liquidity on both the buy and the sell side within the percentages described below during at least 90% of Regular Trading Hours. For Qualified Securities, such liquidity must be within 5% of both the NBB and NBO. For Enhanced Securities, such liquidity must be within 5% of both the NBB and NBO. As described above, while the Exchange acknowledges that the proposed depth of book requirements

for Qualified Security Minimum Performance Standards and Enhanced Security Minimum Performance Standards are identical, the Exchange expects to modify these requirements at a later date through another rule filing.

As noted above, to conform the proposal to the Exchange's rulebook, the Exchange proposes to move the existing Minimum Performance Standards for Closed-End Funds to proposed Rule 11.8(e)(1)(E)(ii)(a)–(e). The Exchange is not proposing to modify any of the Minimum Price Standards applicable to Closed-End Funds at this time.

The Exchange also proposes to modify the Exchange's Fee Schedule to delineate the LMM program applicable to Primary Equity Securities from the LMM program applicable to ETPs and Closed-End Funds, as provided in footnote 14 of the Fee Schedule, and to adopt and amend definitions included in the Fee Schedule to clarify the difference in the LMM programs. The Exchange notes that it is not proposing any substantive change to the LMM Pricing under footnote 14 of the Fee Schedule as it relates to ETPs and Closed-End Funds, but is merely extricating Corporate Securities from existing LMM Pricing and establishing new applicable pricing to LMMs in Corporate Securities.

First, the Exchange proposes to modify the current definition of Qualified LMM to apply only to Corporate Securities. Currently, the definition of Qualified LMM applies to all BZX-listed securities, including Corporate Securities, ETPs, and Closed-End Funds. Now, the Exchange proposes to modify the definition of Qualified LMM to provide that it meets the Minimum Performance Standards defined in proposed Rule 11.8(e)(1)(E)(i), which are applicable to Corporate Securities. The Exchange also proposes to adopt a new definition for "Qualified ETP LMM", which would mean an LMM in a BZX-listed ETP or Closed-End Fund security that meets Qualified ETP LMM performance standards set forth in Rule 11.8(e)(1)(E).¹² Such Minimum Performance Standards for Closed-End Funds are defined in Rule 11.8(e)(1)(E)(ii). The Exchange is not proposing any substantive change to the term Qualified LMM as it pertains to

ETPs or Closed-End Funds, but is simply proposing a new definition in order to clearly delineate Qualified LMMs in Corporate Securities from Qualified LMMs in ETPs and Closed-End Funds. Finally, while not new in concept, the Exchange proposes to adopt a new definition for "LMM Securities", which would mean BZX-listed securities for which a Member is an LMM. Currently, the term "LMM Security" is defined in footnote 14(A)(i) of the Fee Schedule, but, as described below, the Exchange is proposing to modify the existing definition so that it applies only to ETPs and Closed-End Funds. As the term "LMM Security" is used as a defined term elsewhere in the Fee Schedule, the Exchange is proposing to adopt a new definition under the "Definitions" section of the Fee Schedule that is substantively identical to the existing term in footnote 14(A)(i).

As noted above, footnote 14 of the Fee Schedule sets forth LMM Pricing on the Exchange. The Exchange proposes to re-letter existing paragraphs (A) through (D) under footnote 14, to (B) through (E), respectively, to provide for new paragraph (A). Proposed paragraph (A) would set forth the Liquidity Provision Rates applicable to Primary Equity Securities (also referred to as "Corporate Securities") listed on the Exchange. Specifically, paragraph (A) would provide that Qualified LMMs in BZX-listed Primary Equity Securities are eligible to receive the Corporate LMM Add Liquidity Rebate for such Corporate Securities for a calendar month on a security-by-security basis. For each calendar month the Qualified LMM will receive a rebate of \$0.0030 per share (or the greater of any other applicable rebate). Qualified LMMs in Corporate Securities will be subject to the standard remove fee of \$0.0030 per share in securities priced at or above \$1.00, and 0.30% of the total dollar value for securities priced below \$1.00.

Currently, LMMs in Corporate Securities are eligible to receive the LMM Liquidity Provision Rates as provided under paragraph (A) of footnote 14 in the Fee Schedule, which provides for a maximum stipend for LMMs that meet the Minimum Performance Standards. As proposed, LMMs in Corporate Securities will no longer be eligible for the LMM Liquidity Provision Rates program but may have the potential to receive higher incentives under the proposed program as the rebates are transaction-based and therefore have no maximum incentive in a given month.

Similarly, because the Exchange has proposed to modify the Minimum

Performance Standards applicable to Corporate Securities, the Exchange is also proposing that LMMs in Corporate Securities will no longer be eligible for the LMM Add Liquidity Rebate as provided under paragraph (B) of footnote 14 in the Fee Schedule. As proposed, the LMM Add Liquidity Rebates would continue to be available to LMMs in ETPs and Closed-End Funds. The LMM Add Liquidity Rebate currently provides that LMMs in BZX-listed securities that have a consolidated average daily volume ("CADV") greater than or equal to 1,000,000 (an "ALR Security") are eligible to receive the LMM Add Liquidity Rebate for such ALR Securities for a calendar month on a security-by-security basis. For each calendar month in which an LMM is a Qualified LMM in an ALR Security, the LMM will receive the greater of an enhanced rebate of \$0.0039 per share (instead of any other applicable rebate for transactions in the ALR Security) or the LMM Liquidity Provision Rates described above that would otherwise apply for the LMM in the applicable ALR Security. While the proposed Corporate LMM Liquidity Provision Rates provide a lower rebate than the current LMM Add Liquidity Rebate, the Exchange believes that the proposed rebate is commensurate with the difficulty of meeting the proposed Minimum Performance Standards and transacting volume in Corporate Securities.

The Exchange proposes to modify the naming conventions in proposed paragraph (B) under footnote 14 to make clear that the Liquidity Provision Rates are only applicable to ETPs and Closed-End Funds, and are not applicable to Corporate Securities. Specifically, proposed paragraph (B)(i) under footnote 14 would provide that LMMs in BZX-listed ETP and Closed-End Fund securities ("ETP LMMs") will receive the applicable rates on a daily basis per security for which the LMM is a Qualified ETP LMM (a "Qualified ETP Security") based on the average aggregate daily auction volume of the BZX-listed securities for which the Member is the ETP LMM ("ETP LMM Securities"). Proposed paragraph (B)(ii) under footnote 14 would provide that LMMs in BZX-listed ETP and Closed-End Fund securities will receive the applicable rates on a daily basis per Qualified ETP Security for which they also meet certain enhanced market quality standards (an "Enhanced ETP Security") in addition to the Standard Rates provided in paragraph (B)(i) under footnote 14. The Exchange also proposes to modify the description of the rates to

¹² Such standards applicable to ETPs and Closed-End Funds will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see LMM Program Filing.

provide that the daily incentive is applicable to a Qualified ETP Security or Enhanced ETP Security, as applicable. The Exchange is not proposing any changes to the calculation of the ETP and Closed-End Fund LMM Liquidity Provision Rates.

The Exchange proposes to modify proposed paragraph (C) under footnote 14 to provide that the LMM Add Liquidity Rebate is only applicable to ETP and Closed-End Fund securities listed on the Exchange. Accordingly, proposed paragraph (C) would state that ETP LMMs, as defined in paragraph (B)(i) of footnote 14, in BZX-listed securities that have a CADV \geq 1,000,000 (an "ALR Security") are eligible to receive the ETP LMM Add Liquidity Rebate for such ALR Securities for a calendar month on a security-by-security basis. For each calendar month in which an ETP LMM is a Qualified ETP LMM in an ALR Security, the ETP LMM will receive the greater of an enhanced rebate of \$0.0039 per share (instead of any other applicable rebate for transactions in the ALR Security) or the ETP LMM Liquidity Provision Rates described above that would otherwise apply for the ETP LMM in the applicable ALR Security. ETP LMMs in an ALR Security remain eligible to achieve other incentives and tiers unless otherwise explicitly excluded. The Exchange is not proposing to change how the LMM Add Liquidity Rebate is calculated or the amount of the rebate, but is merely modifying it to extricate Corporate Securities from the rebate program.

The Exchange is proposing no changes to proposed paragraph (D) under footnote 14. Closing Auction rates applicable to LMMs in ETP, Closed-End Funds and Corporate BZX-Listed securities will continue to transact for free in the Closing Auction in their LMM Securities.

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.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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. Further, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4),¹⁵ in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes both issuers of securities and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The LMM Program reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all ETPs, Primary Equity Securities, and Closed-End Funds listed on the Exchange.

The Exchange believes that the proposal to adopt separate Minimum Performance Standards applicable to Primary Equity Securities is consistent with the Act because it will enhance market quality in those securities. Under the current LMM Program, LMMs in Corporate Securities are incentivized to provide tightened spreads, deeper liquidity, and provide better execution opportunities. As proposed, LMMs in Corporate Securities will continue to be incentivized to meet Minimum Performance Standards, albeit with slightly less stringent standards than are currently applicable. Nonetheless, the Exchange believes the proposed Minimum Performance Standards are appropriate for Corporate Securities, which are typically more liquid than other types of listed products. Further, the Exchange believes Minimum Performance Standards tailored specifically to Corporate Securities listed on the Exchange will be more attractive to LMMs as they more closely align with quoting and trading activity in those securities, while still generally aligning with the existing Minimum

Performance Standards on the Exchange, which LMMs are already familiar with.

The Exchange believes that the proposed rebate under the Proposed Corporate LMM Liquidity Provision Rates is reasonable as they are in-line with other rebates available to Members on the Exchange. For example, under the Add Volume Tiers of footnote 1 of the Fee Schedule, Members are eligible for rebates ranging from \$0.0020 up to \$0.0031 per share if they meet certain required criteria. Furthermore, as discussed above, LMMs will continue to be eligible for other rebates, such as those available under the Add Volume Tiers, and will receive the greater among the rebates that it qualifies.

The Exchange believes it is reasonable to separate Corporate Securities from ETP and Closed-End Fund securities in the LMM Program. In particular, as the Exchange is proposing to adopt specific liquidity rates applicable to LMMs in Corporate Securities, the Exchange believes it follows to remove Corporate Securities from the existing liquidity provisions of proposed sections (B) and (C) under footnote 14 of the Fee Schedule.

The Exchange also believes that it is reasonable to provide incentives to LMMs in Corporate Securities on a transaction basis rather than solely achieving certain objective market quality metrics. Unlike ETPs, Corporate Securities are valued on the trading price of the security rather than derived from the underlying assets owned by the ETP.¹⁶ Therefore, the Exchange believes it is important to incentivize both transactions and market quality metrics in those securities. The Exchange believes its proposed LMM Program for Corporate Securities strikes an appropriate balance by requiring an LMM to achieve certain Minimum Performance Standards in order to be eligible to receive the Corporate LMM Liquidity Provision Rates on the

¹⁶ The end-of-day net asset value ("NAV") of an ETP is a daily calculation based off of the most recent closing prices of the underlying assets and an accounting of the ETP's total cash position at the time of calculation. ETPs are generally subject to a creation and redemption mechanism to ensure that the ETP's price does not fluctuate too far from the NAV, which mechanisms mitigate the potential for exchange trading to impact the price of an ETP. The "arbitrage function" performed by market participants influences the supply and demand of shares, and thus, trading prices relative to NAV. The arbitrage function helps to keep an ETP's price in line with the value of its underlying portfolio, and the Exchange believes that the arbitrage mechanism is generally an effective and efficient means of ensuring that intraday pricing in ETPs closely tracks the value of the underlying portfolio or reference assets.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(4).

Exchange, as provided in proposed footnote 14(A) of the Fee Schedule.

Registration as an LMM is and will continue to be available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Where an LMM does not meet the Minimum Performance Standards for Corporate Securities as provided in proposed Rule 11.8(e)(1)(E)(i), they will not receive the Liquidity Provision Rates set forth in proposed footnote 14(A) of the Exchange's Fee Schedule. If an LMM does not meet the applicable Minimum Performance Standards for three out of the past four months, the LMM will continue to be subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

As described above, the Exchange proposes to provide fees and rebates specifically applicable to a Qualified LMM in transactions in BZX-listed Primary Equity Securities as provided in proposed footnote 14(A). The Exchange believes that the proposed fee for liquidity removing transactions in Corporate Securities is reasonable as it is generally consistent with the standard liquidity removing fee on the Exchange which charges a fee of \$0.0030 per share for securities priced above \$1. The Exchange also believes the proposed rebate for liquidity adding transactions in Corporate Securities is reasonable as it appropriately incentivizes LMMs to meet the proposed Minimum Performance Standards throughout the month in addition to transacting in those Corporate Securities. The Exchange notes that the proposed rebate is generally in-line with other volume adding incentives (e.g., the add volume tiers under footnote 1 of the Fee Schedule offer rebates ranging from \$0.0020 up to \$0.0031 per share), and the Exchange believes such rebate is reasonably commensurate with the Minimum Performance Standards and transaction requirements of the proposed Corporate LMM Liquidity Provision Rates.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed Primary Equity Securities and as a listing venue by enhancing market

quality in those securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of issuers, LMMs, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed Primary Equity Securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the applicable Minimum Performance Standards for three out of the past four months, the LMM would continue to be subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁷ and Rule 19b-4(f)(6)¹⁸ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time of such action is consistent with the protection of investor and the public

interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiving the operative delay would allow market participants to realize immediately the benefits of the proposal, which the Exchange states include market quality enhancements, and would help the Exchange better compete as a listing venue for Primary Equity Securities without undue delay. The proposed change raises no novel legal or regulatory issues. Based on the foregoing, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²¹

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 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-013 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-2024-013. This file number should be included on the subject line if email is used. To help the

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2024-013 and should be submitted on or before March 4, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99479; File No. SR-CboeBZX-2023-087]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Invesco Galaxy Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

February 6, 2024.

On October 20, 2023, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") 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 list and trade shares ("Shares") of the Invesco Galaxy Ethereum ETF ("Trust") under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on November 8, 2023.³

On December 13, 2023, pursuant to Section 19(b)(2) of the Act,⁴ 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 disapprove the proposed rule change.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,⁷ the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the the spot price of ether as measured by using the Lukka Prime Reference Rate ("Benchmark") less the Trust's expenses and other liabilities.⁸ The Trust's assets will consist of ether held by the Trust's custodian on behalf of the Trust.⁹ The Trust will value its Shares daily based on the reported Benchmark.¹⁰ The administrator of the Trust will determine the net asset value ("NAV") of the Trust on each day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. ET.¹¹ In determining the Trust's NAV, the administrator values the ether held by the Trust based on the price set by

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 98846 (Nov. 2, 2023), 88 FR 77116 ("Notice"). Comments on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2023-087/sr-cboebzx2023087.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 99151, 88 FR 87822 (Dec. 19, 2023). The Commission designated February 6, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, *supra* note 3.

⁸ See *id.* at 77118. Invesco Capital Management ("Sponsor") is the sponsor of the Trust. See *id.* at 77116.

⁹ See *id.* at 77116. The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust would unexpectedly hold cash on a temporary basis. See *id.* at 77116-17.

¹⁰ See *id.* at 77118.

¹¹ See *id.* at 77119.

the Benchmark as of 4:00 p.m. ET.¹² When the Trust sells or redeems its Shares, it will do so in "in-kind" transactions with authorized participants in large blocks of Shares.¹³

II. Proceedings To Determine Whether To Approve or Disapprove SR-CboeBZX-2023-087 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act¹⁴ to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,¹⁵ the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices" and "to protect investors and the public interest."¹⁶

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares?¹⁷

¹² See *id.*

¹³ See *id.* at 77117.

¹⁴ 15 U.S.C. 78s(b)(2)(B).

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ BZX Rule 14.11(e)(4)(C)(i) defines the term "Commodity-Based Trust Shares" as a security (a) that is issued by a trust that holds (1) a specified commodity deposited with the trust, or (2) a specified commodity and, in addition to such

²² 17 CFR 200.30-3(a)(12), (59).

¹ 15 U.S.C. 78s(b)(1).