

request for an opportunity to make an oral presentation.<sup>42</sup>

The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2019-059 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-CboeEDGX-2019-059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2019-059 and should be submitted on or before December 24, 2019. Rebuttal comments should be submitted by January 7, 2020.

#### **VI. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>43</sup> that File No. SR-CboeEDGX-2019-059 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>44</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2019-26055 Filed 12-2-19; 8:45 am]

**BILLING CODE 8011-01-P**

#### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-87629; File No. SR-CboeBZX-2019-086]**

#### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce a Small Retail Broker Distribution Program**

November 26, 2019.

#### **I. Introduction**

On October 1, 2019, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the BZX fee schedule to introduce a Small Retail Broker Distribution Program (the "Program"). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on

October 21, 2019.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. Under Section 19(b)(3)(C) of the Act,<sup>5</sup> the Commission is hereby: (i) Temporarily suspending the proposed rule change; and (ii) instituting proceedings to determine whether to approve or disapprove the proposed rule change.

#### **II. Description of the Proposed Rule Change**

The Exchange proposes to amend its fee schedule to introduce a pricing program that would allow certain Distributors<sup>6</sup> to purchase the Cboe One Summary Feed<sup>7</sup> from the Exchange at discounted fees. Currently, the Exchange charges \$5,000 per month for external distribution of Cboe One Summary Feed, and a Data Consolidation Fee of \$1,000 per month. The Exchange also charges a fee \$10 per month for each Professional User and \$0.25 for each Non-Professional User.<sup>8</sup>

Under the Exchange's proposal, Distributors that qualify for the Program would be charged a discounted fee of \$3,500 per month for the distribution of Cboe One Summary Feed. Distributors that qualify for the Program would also be charged a discounted Data Consolidation Fee of \$350 for Cboe One Summary Feed. The Exchange would

<sup>4</sup> See Securities Exchange Act Release No. 87312 (October 15, 2019), 84 FR 56235 ("Notice").

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> A Distributor of an Exchange market data product is any entity that receives the Exchange market data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party. See BZX Fee Schedule.

<sup>7</sup> Cboe One Summary Feed is a data feed that offers top of book quotations and execution information based on equity orders submitted to the Exchange and its affiliated equities exchanges, *i.e.*, Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., and Cboe BYX Exchange, Inc. See Notice, *supra* note 4, 84 FR at 56235.

<sup>8</sup> A "Professional User" of an Exchange market data product is any user other than a Non-Professional User. See BZX Fee Schedule. A "Non-Professional User" of an Exchange market data product is a natural person or qualifying trust that uses data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) Registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States. *Id.*

<sup>42</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

<sup>43</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>44</sup> 17 CFR 200.30-3(a)(57) and (58).

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

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

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

continue to charge the current Professional and Non-Professional User fees for Cboe One Summary Feed.

In order to qualify for the Program, a Distributor must meet the following criteria: (i) Distributor is a broker-dealer distributing Cboe One Summary Feed Data to Non-Professional Data Users with whom the broker-dealer has a brokerage relationship; (ii) more than 50% of the Distributor's total subscriber population must consist of Non-Professional subscribers, inclusive of any subscribers not receiving Cboe One Summary Feed; and (iii) Distributor distributes Cboe One Summary Feed to no more than 5,000 Non-Professional Data Users.

### III. Suspension of the Proposed Rule Change

Pursuant to Section 19(b)(3)(C) of the Act,<sup>9</sup> at any time within 60 days of the date of filing of a proposed rule change pursuant to Section 19(b)(1) of the Act,<sup>10</sup> the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule change is necessary and appropriate to allow for additional analysis of the proposed rule change's consistency with the Act and the rules thereunder.

A fee change to introduce the Program was originally filed on August 1, 2019. That proposal, CboeBZX-2019-069, was published for comment in the **Federal Register** on August 20, 2019.<sup>11</sup> The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, the Division of Trading and Markets (the "Division"), acting on behalf of the Commission by delegated authority, issued an order temporarily suspending CboeBZX-2019-069 pursuant to Section 19(b)(3)(C) of the Act<sup>12</sup> and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act<sup>13</sup> to determine whether to approve or disapprove that proposal.<sup>14</sup>

The Exchange continues to assert that the proposed fees for the Program "are reasonable as they represent a

significant cost reduction for smaller, primarily regional, retail brokers that provide top of book data from BZX and its affiliated exchanges to their retail investor clients."<sup>15</sup> The Exchange also asserts that the "proposed fees are equitable and not unfairly discriminatory as the proposed fee structure is designed to decrease the price and increase the availability of U.S. equities market data to retail investors."<sup>16</sup> Finally, the Exchange states that while the proposed fees are limited to smaller firms that distribute data to no more than 5,000 Non-Professional data users, it does not believe that the proposed fees for the Program are inequitable or unfairly discriminatory.<sup>17</sup>

When exchanges file their proposed rule changes with the Commission, including fee filings like the Exchange's present proposal, they are required to provide a statement supporting the proposal's basis under the Act and the rules and regulations thereunder applicable to the exchange.<sup>18</sup> The instructions to Form 19b-4, on which exchanges file their proposed rule changes, specify that such statement "should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with [those] requirements."<sup>19</sup>

Among other things, exchange proposed rule changes are subject to Section 6 of the Act, including Sections 6(b)(4), (5), and (8), which requires the rules of an exchange to: (1) Provide for the equitable allocation of reasonable fees among members, issuers, and other persons using the exchange's facilities;<sup>20</sup> (2) perfect the mechanism of a free and open market and a national market system, protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers;<sup>21</sup> and (3) not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>22</sup>

In temporarily suspending the Exchange's fee change, the Commission intends to further consider whether the establishment of the Program is consistent with the statutory requirements applicable to a national

securities exchange under the Act. In particular, the Commission will consider whether the proposed rule change satisfies the standards under the Act and the rules thereunder requiring, among other things, that an exchange's rules provide for the equitable allocation of reasonable fees among members, issuers, and other persons using its facilities; not permit unfair discrimination between customers, issuers, brokers or dealers; and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>23</sup>

Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to temporarily suspend the proposed rule changes.<sup>24</sup>

### IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change

The Commission is instituting proceedings pursuant to Sections 19(b)(3)(C)<sup>25</sup> and 19(b)(2)(B) of the Act<sup>26</sup> to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to disapprove the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,<sup>27</sup> the Commission is providing notice of the grounds for possible disapproval under consideration:

- Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities,"<sup>28</sup>
- Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange

<sup>23</sup> See 15 U.S.C. 78f(b)(4), (5), and (8), respectively.

<sup>24</sup> For purposes of temporarily suspending the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 15 U.S.C. 78s(b)(3)(C). Once the Commission temporarily suspends a proposed rule change, Section 19(b)(3)(C) of the Act requires that the Commission institute proceedings under Section 19(b)(2)(B) to determine whether a proposed rule change should be approved or disapproved.

<sup>26</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>27</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>28</sup> 15 U.S.C. 78f(b)(4).

<sup>15</sup> See Notice, *supra* note 4, 84 FR at 56237.

<sup>16</sup> *Id.* at 56238.

<sup>17</sup> *Id.*

<sup>18</sup> See 17 CFR 240.19b-4 (Item 3 entitled "Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change").

<sup>19</sup> See *id.*

<sup>20</sup> 15 U.S.C. 78f(b)(4).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78f(b)(8).

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

<sup>10</sup> 15 U.S.C. 78s(b)(1).

<sup>11</sup> See Securities Exchange Act Release No. 86667 (August 14, 2019), 84 FR 43233.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>13</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>14</sup> See Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208.

be “designed to perfect the operation of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers.”<sup>29</sup> and

- Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”<sup>30</sup>

As noted above, the proposal establishes new discounted fees for Distributors of the Exchange’s Choe One Summary data feed. The Commission notes that the Exchange’s statements in support of the proposed rule change are general in nature and lack detail and specificity. The Exchange states that it operates in a highly competitive environment, and its ability to price these products is constrained by (i) competition among other national securities exchanges that offer similar data products to their customers; and (ii) real-time consolidated data disseminated by the securities information processors.<sup>31</sup> The Exchange also states that the proposed Program would reduce fees charged to small retail brokers that provide access to the Choe One Summary Feed.<sup>32</sup> The Exchange notes that it has one distributor that qualifies and is taking advantage of the Program’s pricing,<sup>33</sup> and notes that Program’s fees are often lower than Nasdaq’s fees.<sup>34</sup> The Exchange also notes that “[w]hile there is no ‘exact science’ to choosing one eligibility threshold compared to another, the Exchange believes that having more Non-Professional Data Users across a firm’s entire business . . . is indicative of a broker-dealer that is primarily engaged in the business of serving retail investors.”<sup>35</sup> The Exchange states that larger broker-dealers and/or vendors benefit from lower subscriber fees and enterprise licenses, that Distributors that provide data to more than 5,000 Non-Professional data users “enjoy cost savings compared to competitor products,” and that the proposed fees would “ensure that small retail brokers that distribute top of book data to their retail investor customers could also benefit from reduced pricing . . .”<sup>36</sup>

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the [Act] and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change.”<sup>37</sup> The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,<sup>38</sup> and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.<sup>39</sup>

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposed fees are consistent with the Act, and specifically, with its requirements that exchange fees be reasonable and equitably allocated; be designed to perfect the mechanism of a free and open market and the national market system, protect investors and the public interest, and not be unfairly discriminatory; or not impose an unnecessary or inappropriate burden on competition.<sup>40</sup>

## V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by December 24, 2019. Rebuttal comments should be submitted by January 7, 2020. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.<sup>41</sup>

The Commission asks that commenters address the sufficiency and

merit of the Exchange’s statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–ChoeBZX–2019–086 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–ChoeBZX–2019–086. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ChoeBZX–2019–086 and should be submitted on or before December 24, 2019. Rebuttal comments should be submitted by January 7, 2020.

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> See Notice, *supra* note 4, 84 FR at 56239.

<sup>32</sup> See *id.* at 56237.

<sup>33</sup> See *id.* at 56236.

<sup>34</sup> See *id.* at 56238–39.

<sup>35</sup> See *id.* at 56238.

<sup>36</sup> *Id.*

<sup>37</sup> Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

<sup>38</sup> See *id.*

<sup>39</sup> See *id.*

<sup>40</sup> See 15 U.S.C. 78f(b)(4), (5), and (8).

<sup>41</sup> 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

## VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(3)(C) of the Act,<sup>42</sup> that File No. SR-CboeBZX-2019-086 be and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>43</sup>

Jill M. Peterson,  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87636; File No. SR-CboeBZX-2019-023]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 14.11(c) (Index Fund Shares) To Adopt Generic Listing Standards for Index Fund Shares Based on an Index of Municipal Securities

November 27, 2019.

## I. Introduction

On April 3, 2019, 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”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend Cboe BZX Rule 14.11(c) to adopt generic listing standards for Index Fund Shares (“Shares”) based on an index or portfolio of municipal securities. The proposed rule change was published for comment in the **Federal Register** on April 22, 2019.<sup>3</sup> On May 30, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On July 18, 2019, the

Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On October 15, 2019, the Commission extended the period for issuing an order approving or disapproving the proposed rule change.<sup>8</sup> On October 31, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced in its entirety the original proposed rule change.<sup>9</sup> The Commission has received no comment letters on the proposed rule change.

## II. The Exchange’s Description of the Proposed Rule Change, as Modified by Amendment No. 1

Rule 14.11(c) permits the Exchange to list a series of Index Fund Shares based on an index or portfolio of underlying securities. Currently, Rule 14.11(c)(4)(B)(i) provides generic listing standards for Index Fund Shares based on an index or portfolio of fixed income securities. The Exchange proposes to amend the Rule to add a new subsection Rule 14.11(c)(4)(B)(ii) to provide quantitative generic listing standards for Index Fund Shares based on an index or portfolio of Municipal Securities<sup>10</sup> that do not meet the generic listing standards under Rule 14.11(c)(4)(B)(i).<sup>11</sup> All other standards, however, not included in Rule 14.11(c)(4)(B)(i) applicable to

designated July 21, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

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

<sup>7</sup> See Securities Exchange Act Release No. 86410, 84 FR 35698 (July 24, 2019).

<sup>8</sup> See Securities Exchange Act Release No. 87300, 84 FR 56209 (October 21, 2019). The Commission designated December 18, 2019, as the date by which the Commission shall either approve or disapprove the proposed rule change.

<sup>9</sup> In Amendment No. 1, the Exchange: (1) Clarified that its proposed requirement that an underlying index or portfolio must include a minimum of 13 “non-affiliated” issuers means a minimum of 13 “unique” issuers; and (2) prohibited its generic listing of Index Fund Shares based on Municipal Securities (defined below) that seeks to provide investment results, before fees and expenses, in an amount that exceeds –300% of the percentage performance on a given day of an index of Municipal Securities. Amendment No. 1 is available at: <https://www.sec.gov/comments/sr-cboebzx-2019-023/sr-cboebzx2019023-6388601-198128.pdf>. In view of the Commission’s recent approval of another exchange’s substantively identical proposal, Amendment No. 1 raises no novel issues and is therefore not subject to notice and comment. See Securities Exchange Act Release Nos. 85170 (February 21, 2019), 84 FR 6451 (February 27, 2019) and 87382 (October 22, 2019), 84 FR 57789 (October 28, 2019) (SR-NYSEArca-2019-04) (“NYSE Arca Proposal”).

<sup>10</sup> According to the proposal, the term “Municipal Securities” has the definition given to it in Section 3(a)(29) of the Act.

<sup>11</sup> The Exchange notes that its proposal is substantively identical to the NYSE Arca Proposal. See *supra* note 9.

series of Index Fund Shares based on an index composed of fixed income securities will continue to apply to a series of Index Fund Shares based on an index or portfolio of Municipal Securities listed pursuant to Rule 14.11(c)(4)(B)(ii). The Exchange also proposes to add language that would prohibit the listing of Shares under proposed Rule 14.11(c)(4)(B)(ii) that would seek to provide investment results, before fees and expenses, in an amount exceeding –300% of the percentage performance on a given day.

According to the Exchange, indices of Municipal Securities are able to satisfy all of the generic listing requirements applicable to fixed income indices in Rule 14.11(c)(4)(b)(i) except the requirement that component securities in an index have a minimum original principal amount outstanding of \$100 million or more. The Exchange provides that Municipal Securities are generally issued with individual maturities of relatively small size, although they generally are constituents of a much larger municipal bond offering. Therefore, Municipal Securities are unable to satisfy the Rule’s requirement that “at least 75% of the Fixed Income Securities portion of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of \$100 million or more.” Notwithstanding the inability of a Municipal Securities index to meet this aspect of the generic listing standards, the Exchange notes that the Commission previously approved for listing and trading Index Fund Shares based on such indices.<sup>12</sup>

<sup>12</sup> See Securities Exchange Act Release Nos. 84107 (September 13, 2018), 83 FR 47210 (September 18, 2018) (SR-CboeBZX-2018-070) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the iShares iBonds Dec 2025 Term Muni Bond ETF of iShares Trust Under BZX Rule 14.11(c)(4) (Index Fund Shares)); 79381 (November 22, 2016), 81 FR 86044 (November 29, 2016) (SR-BatsBZX-2016-48) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendments No. 1 and No. 2 Thereto, To List and Trade Shares of the iShares iBonds Dec 2023 Term Muni Bond ETF and iShares iBonds Dec 2024 Term Muni Bond ETF of the iShares U.S. ETF Trust Pursuant to BZX Rule 14.11(c)(4); 67985 (October 4, 2012), 77 FR 61804 (October 11, 2012) (SR-NYSEArca-2012-92) (order approving proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 67729 (August 24, 2012), 77 FR 52776 (August 30, 2012) (SR-NYSEArca-2012-92) (notice of proposed rule change relating to the listing and trading of iShares 2018 S&P AMT-Free Municipal Series and iShares 2019 S&P AMT-Free Municipal Series under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02); 72523 (July 2, 2014), 79 FR 39016 (July 9, 2014) (SR-NYSEArca-2014-37) (order approving proposed rule change relating to the listing and trading of iShares 2020 S&P AMT-

<sup>42</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>43</sup> 17 CFR 200.30-3(a)(57) and (58).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 85656 (April 16, 2019), 84 FR 16753.

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

<sup>5</sup> See Securities Exchange Act Release No. 85966, 84 FR 26172 (June 5, 2019). The Commission