

investors affected by, the Rule. For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

#### V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendments Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, as modified by Partial Amendment Nos. 1 and 2 thereto, prior to the 30th day after publication of Partial Amendment No. 2 in the **Federal Register**. Partial Amendment No. 2 responds specifically to comments received in response to the Order Instituting Proceedings and makes corresponding amendments to the proposal. These revisions specifically respond to comments received, add clarity to the proposal, and do not raise any novel regulatory concerns. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Partial Amendment Nos. 1 and 2 on an accelerated basis.

#### VI. Solicitation of Comments on Partial Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment Nos. 1 and 2, 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-FINRA-2019-012 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-FINRA-2019-012. 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 FINRA. 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-FINRA-2019-012 and should be submitted on or before January 21, 2020.

#### VII. Conclusion

*It is therefore ordered* pursuant to Exchange Act Section 19(b)(2)<sup>53</sup> that the proposal (SR-FINRA-2019-012), as modified by Partial Amendments Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>230</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87852; File No. SR-CBOE-2019-122]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Allow the Exchange To Continue To List Classes of Options on the MSCI Emerging Markets Index After January 1, 2020

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 12, 2019, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") 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 and, for the reasons discussed below, is issuing this order approving the proposed rule change on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. seeks approval from the Securities and Exchange Commission to continue listing classes of options on the MSCI EM Index.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 seek approval pursuant to Rule 4.10(i) for the continued listing of options on the EM Index ("EM Options"). Rule 4.10(i) establishes maintenance listing standards that apply to options on the EM Index<sup>3</sup> and also provides that in the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act. Specifically, Rule 4.10(i)(2), requires that the total number of component securities in the EM Index

<sup>230</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> As well as the MSCI EAFE, FTSE Emerging and FTSE Developed Europe indexes.

may not increase or decrease by more than 10% over the last six-month period (the “component securities threshold”). Due to global market trends and the overall objectives of the EM Index, as described below, the Exchange has become aware that the EM Index will not meet this requirement for the next bi-annual index surveillance review of the EM Index components as-of January 1, 2020. Thus, the Exchange now seeks the Commission’s approval for the continued listing of options on the EM Index, specifically, in connection with the component securities threshold, beginning January 1, 2020, as provided in Rule 4.10(i). The Commission’s approval would allow the Exchange to continue to open for trading additional series of options on such index without interruption to the market and investor participation.

The EM Index is designed to capture large and mid-cap representation across emerging market countries. In particular, it is built to “be flexible enough to adjust quickly to a constantly changing opportunity set”, that is, emerging markets.<sup>4</sup> It seeks “to capitalize on the unique attributes of these vibrant economies”, which includes “superior growth potential”.<sup>5</sup> Indeed, EM has experienced a continuous rise in the number of its component securities. When initially listed on the Exchange in 2015, the EM Index consisted of the following 23 emerging market country indexes: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates. At that time, the EM Index had 834 constituents which covered approximately 85% of the free float-adjusted market capitalization in each country. Since its initial listing, Argentina,<sup>6</sup> Pakistan,<sup>7</sup> and Saudi Arabia<sup>8</sup> have joined the list of countries represented in the EM Index. Over recent years, the component securities of the EM Index have grown to a market capitalization of 5,582,502 (USD Millions) (up from 3,219,779 in 2016) and average market capitalization per constituent of 4,644 (USD Millions) (up from 3,847 in 2016). In addition to this, the components securities have an average daily volume of over 42 billion,

<sup>4</sup> See MSCI Emerging Markets Index brochure (dated May 2019) located at: <https://www.msci.com/documents/1296102/15035999/USLetter-MIS-EM-May2019-cbr-en.pdf/fb580e1e-d54c-4c68-1314-977bbff69bd7?t=1559125400402>.

<sup>5</sup> *Id.*

<sup>6</sup> Added in June 2018.

<sup>7</sup> Added in June 2017.

<sup>8</sup> Added in June 2018.

and an average daily volume per constituent of over 35 million. Additionally, the largest constituent in the EM Index currently only accounts for 4.5% of the weight of the EM Index.<sup>9</sup>

Indeed, as a result of the growth of the emerging markets represented, the index has experienced continued expansion. As of July 1, 2019, the number of constituents in the EM Index had grown to a total of 1,194, and, as of October 31, 2019, a total of 1,202 constituents. In particular, the most notable expansion has been the recent (2018) introduction of Saudi Arabian securities (as indicated above) and mainland China component securities<sup>10</sup> into the EM Index. In early 2019, MSCI implemented a two-step inclusion plan for Saudi Arabian component securities and a three-step inclusion plan for mainland China component securities.<sup>11</sup> The plan “phased-in” increases in the weight and number of Saudi Arabian component securities, which was completed in August 2019,<sup>12</sup> and the weight and number of mainland China component securities, which was completed in November 2019.<sup>13</sup> The Exchange notes that the cumulative average growth rate of the EM Index component securities since 2015 has averaged 4.5% every six months. In the six-month window from January 2019 through July 2019 the EM Index experienced approximately a 6.2% increase in component securities; the majority of this increase was a direct result of MSCI’s first inclusion phase of Saudi Arabian and mainland China component security. Though this was a departure from the 4.5% average every six months, the January 2019 through July 2019 increase was contained within the 10% threshold pursuant to Rule 4.10(i)(2). However, as a result of the second inclusion phase for Saudi

<sup>9</sup> See MSCI Emerging Markets Index fact sheet (dated October 31, 2019) located at: <https://www.msci.com/documents/10199/c0db0a48-01f2-4ba9-ad01-226fd5678111>.

<sup>10</sup> China “A-Shares”, which trade on the Shanghai Stock Exchange and Shenzhen Stock Exchange.

<sup>11</sup> See MSCI Implementation Q&A: Inclusion of the MSCI Argentina, the MSCI Saudi Arabia Indexes and China A Shares in the MSCI Emerging Markets Indexes, at 17, 24 (May 2019) located at: <https://www.msci.com/documents/1296102/af029454-117c-f15c-8d5e-52aa627efa14>.

<sup>12</sup> See MSCI Emerging Markets Press Release, MSCI Equity Indexes August 2019 Index Review (August 7, 2019) located at: [https://www.msci.com/eqb/pressreleases/archive/MSCI\\_Aug19\\_QIRPR.pdf](https://www.msci.com/eqb/pressreleases/archive/MSCI_Aug19_QIRPR.pdf); and MSCI Emerging Markets Press Release, MSCI Equity Indexes May 2019 Index Review (May 13, 2019) located at: [https://app2.msci.com/eqb/pressreleases/archive/MSCI\\_May19\\_QIRPR.pdf](https://app2.msci.com/eqb/pressreleases/archive/MSCI_May19_QIRPR.pdf).

<sup>13</sup> See MSCI Emerging Markets Press Release, MSCI Equity Indexes November 2019 Index review (November 7, 2019) located at: [https://www.msci.com/eqb/pressreleases/archive/MSCI\\_Nov19\\_QIRPR.pdf](https://www.msci.com/eqb/pressreleases/archive/MSCI_Nov19_QIRPR.pdf).

Arabian and mainland China shares in August 2019, coupled with the third, and last, inclusion phase for mainland China shares in November 2019, the EM Index has surpassed a 10% increase from July 2019, and therefore, will be non-compliant with the component securities threshold for the Exchange’s next bi-annual review of the component securities as-of January 1, 2020. Specifically, as a result of the August 2019 and November 2019 inclusions, the EM Index has experienced approximately a 17% increase from July 2019 (1,202 component securities at this time) to November 2019 (a total of 1,410 component securities after the November 2019 inclusion). The Exchange notes that this significant increase since July 2019 is an isolated departure from the 4.5% average six-month increases the EM Index has typically and steadily experienced since 2015. The Exchange further notes that the component securities threshold was the only threshold implicated as a result of MSCI’s inclusion plan, and that the other threshold tests applicable to the EM Index under Rule 4.10(h) will be met as-of January 1, 2019 [sic]. As such, the Exchange respectfully requests that the Commission approve the continued listing of options on the EM Index in connection with the component securities threshold beginning January 1, 2020, as provided in Rule 4.10(i).

The Exchange believes that MSCI’s recent inclusion plans are an exception to the normal course of the MSCI index reviews. The timing of the inclusion plans for the two, rapidly expanding markets arose around the same time, due to similar market overhauls separately undertaken by Saudi Arabia and China. In the recent years, Saudi Arabian markets have increased privatization and implemented several enhancements that further opened their markets to international institutional investors, while the Chinese government has eased previously strict access controls on their markets.<sup>14</sup> As a result of these developments, MSCI conducted “extensive global consultation with a large number of international institutional investors, including asset owners, asset managers, broker/dealers and other market

<sup>14</sup> See MSCI Press Release, MSCI Will Increase the Weight of China A Shares in MSCI Indexes (February 28, 2019) located at: [https://www.msci.com/documents/10199/238444/China\\_A\\_Further\\_Weight\\_Increase\\_PR\\_Eng.pdf/43f3ee8b-5182-68d4-a758-2968b4206e54](https://www.msci.com/documents/10199/238444/China_A_Further_Weight_Increase_PR_Eng.pdf/43f3ee8b-5182-68d4-a758-2968b4206e54); see also MSCI Press Release, Results of the MSCI 2018 Market Classification Review (June 20, 2018) located at: <https://www.msci.com/documents/10199/95fa3628-ff2e-e9cd-53b9-8912329ec40c> (discussing the decision to include Saudi Arabia).

participants worldwide,”<sup>15</sup> in order to ultimately implement the inclusion plans. The Exchange also notes that, although MSCI announced the inclusion phase-in plan prior to its implementation, the number of component securities actually added (or removed as part of MSCI’s regular quarterly reviews) in each phase was unknown until the August 2019 and November 2019 review releases.

The Exchange notes that the 10% threshold is designed to prevent significant adjustments to the number of EM Index constituents, particularly decreases that could: (i) Reduce component securities in the EM Index to a point that would raise manipulation concerns; or (ii) change the general character of the EM Index over which index options are issued. The 10% threshold is designed to allow for the more rapid, shorter-term changes (e.g., an average 4.5% increase in constituents every six-months, and occasional increases from this, like the 6.2% increase from January 2019 through July 2019 as a result of the one inclusion phase) experienced by emerging markets that the EM Index is designed to capture. The current threshold is aligned with the way the EM Index has grown over the past four years and is expected to continue growing.<sup>16</sup>

As noted above, the 10% threshold is designed to prevent material increases that could change the character of the index over which broad-based index options are issued. The Exchange does not believe that the increase described herein changes the character of the EM Index. Unlike an index that is meant to represent a relatively fixed constituent count reflection of large-cap stocks, such as the S&P 500 Index, the EM Index contains mid-cap components and is designed to be flexible to change over time as the represented markets change. Given the increasingly high number of constituents and capitalization of the EM Index, the deep and liquid markets for the securities underlying the index, and the low

percentage each constituent comprises of the total EM Index weight, and normally steady recent growth patterns, the concerns that a further increase, even such a significant 17% increase, in component securities would change the character of the index or allow for potential market manipulation and/or disruption in the underlying markets are greatly reduced. As stated above, the 17% increase is an outlying departure from the incremental increases the EM Index typically experiences.

The Exchange notes that significant decreases, as opposed to increases like those described herein, are more likely to raise concerns related to manipulation and/or disruption in the underlying markets, although the Exchange does not believe that a decrease in the number of constituents in any index, even by an amount greater than 10%, necessarily gives rise to manipulation concerns. Further, the Exchange currently maintains “watch lists” made up of countries and indexes with large constituent count changes which it reviews at least quarterly. The Exchange also conducts intermediate reviews on at least a quarterly basis to identify potential compliance concerns in connection with the continued listing standards in advance of its formal semi-annual index maintenance reviews. If the Exchange determines from its reviews that a change in the EM Index’s composition would affect the protection of investors, it may cease listing series on the EM Index pursuant to Rule 4.4, notwithstanding Commission approval to continue listing options or if an index is still compliant with the component security threshold. The Exchange believes the frequency of these reviews will continue to successfully identify and address continued listing compliance concerns that the component securities threshold is also designed to address for the EM Index.

The Exchange further notes that EM Options are currently listed for trading on the Exchange and that the Exchange generally adds new series after an expiration, which allows trading to commence in the new series on the first trading day after the expiration date. The Exchange currently lists EM options that expire monthly, as well as Friday-expiring weekly options. In addition to this, the Exchange offers FLEX options on this index, which may only be listed if the standard options on an index are authorized to be listed. Specifically, without the Commission’s approval, additional series of weekly EM options may no longer be scheduled to be added, nor will additional monthly series after expiration on January 17, 2020, which would allow trading to

commence in the additional series on the next trading day of January 20, 2020.

In light of MSCI’s November 2019 inclusion, market participants have already begun to express concern to the Exchange regarding interruption in their trading of series on the EM Index come January 2020 as a result of non-compliance with the Exchange’s component securities threshold. Indeed, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC. This poses counter party risks to which a market participant would not otherwise have exposure if series were available on the EM Index. The inability to add the EM options would be a detriment to market participants seeking to hedge portfolios indexed to the EM Index, positions in ETPs based on the EM Index (e.g., EEM), options on EEM and futures on the EM Index, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, to the extent market participants want to roll a position in EM options that expire in January to series at a later expiration date and at a favorable or comparable price, they will be prevented from doing so without the Commission’s approval for continued listing. Furthermore, in the time in which the Exchange may not list additional series on the EM Index, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>17</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>18</sup> 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

<sup>15</sup> See *id.*

<sup>16</sup> The Exchange also notes that the generic listing standards applicable to ETPs listed on other national securities exchanges (e.g., Cboe BZX Exchange Rule 14.11(c)(3)(A)(ii)) do not include any requirements based on the increase or decrease in component securities, and instead only require that an ETP based on an index that includes non-U.S. component stocks includes at least 20 component securities, among other diversification, liquidity, and market cap requirements. As such, an ETP based on the EM Index would not be delisted based on a percentage increase or decrease in component securities as long as it continued to have at least 20 component securities. Therefore, the Exchange believes that the proposed threshold is more restrictive than the current standard for listing products on the EM Index.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(5).

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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>19</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the Commission's approval to continue listing options on the EM Index will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will allow the Exchange to continue to list EM Options in light of the recent inclusion plan exceptions to MSCI's normal course of reviews. As stated above, the 10% threshold is intended to prevent significant changes over shorter periods of time in the EM Index that might potentially change the character of the index or make it more susceptible to manipulation. Given that the EM Index itself is designed to capture and allow for continuous emerging market growth and trends and that the 17% constituent increase appears to be only a temporary departure from the normal incremental growth experienced by the EM Index, the Exchange does not believe that the recent increase changes the character of the EM Index or otherwise raises concerns of market manipulation and/or disruption in the underlying markets. As a general principle, increases in the elements that make up an index, such as market capitalization and the weight and number component securities, do not in and of themselves do not lead to manipulation and/or disruption. This general principle applies to the recent inclusions, therefore, the Exchange does not believe the index has become susceptible to manipulation and/or disruption as a result. Although significant decreases, not increases, would be more likely to raise concerns related to manipulation and/or disruption in the underlying markets, the Exchange notes that it does not believe that a decrease in the number of constituents in any index, even by an amount greater than 10%, necessarily creates manipulation concerns. The Exchange also does not believe that the EM Index is otherwise easily susceptible to manipulation, as it is a broad-based index, its component securities have a high market capitalization, it has an average daily volume of over 42 billion, and no single component comprises

more than 4.5% of the index. The Exchange also notes that a total component securities standard, as provided in Rule 4.10(i)(2), is not essential to the continued listing standards for EM Index-based products, and, instead, is an additional protection against potential manipulation and/or disruption in the underlying securities. Because the EM Index has continued to experience incremental increases in component securities (notwithstanding the exceptional increase as a result of the 2019 inclusion plan), capitalization, and market liquidity in line with continuous emerging market growth trends and the EM's overall investment objectives, the Exchange does not believe that the continued listing of the EM Index following the inclusion plan would circumvent the additional protections of the component securities threshold nor would it affect the protection of investors and the maintenance of a fair and orderly market. In addition to this, the Exchange continues to maintain and review country and index watch lists, as well as conduct intermediate reviews on at least a quarterly basis. Thus, it continues to be able to identify potential compliance concerns in connection with the continued listing standards and may cease listing series on the EM Index at any time if it determines that a change in the index's composition would affect the protection of investors.

As stated above, without the Commission's approval, the Exchange would not be able to list new series of weekly or monthly options on the EM Index after the January 2020 review. The Exchange believes that the Commission's approval to continue listing options on the EM Index is necessary for the protection of investors and the public interest, as without such, the Exchange will be prevented from adding the weekly and monthly EM options. Indeed, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC. OTC poses counter party risks for investors that they would not normally otherwise choose to be subject to if series on the EM Index were available for trading. The inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index (*e.g.*, EEM), options on EEM and EM futures, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these

ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, market participants that wish to roll a position in EM options that expire in January to a position in a series with a later expiration month at a favorable or comparable price, will be prevented from doing so without this amendment. Furthermore, in the time in which the Exchange may not list additional series on EM, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants. The Exchange also notes that since the last inclusion phase was implemented in MSCI's November 2019 review, multiple market participants have expressed their concern to the Exchange regarding interruption of their activity in EM Index series as a result of anticipated non-compliance with the component securities threshold.

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

The Exchange does not believe that the continued listing of options on the EM Index, and the Commission's approval of which the Exchange seeks, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continued listing would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act as it would facilitate the continued, uninterrupted trading of options on the EM Index, on which series are currently listed and readily available for all market participants to trade, as would be the case for series added following the approval for the EM Index's continued listing.

The Exchange does not believe that the continued listing of options on the EM Index would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act as it does not alter the types of products offered by the Exchange in which market participants already may choose to participate. The Commission's approval would merely allow the Exchange to continue listing certain index options in light of the MSCI's recent completion of its inclusion plan and the Exchange would continue to adequately surveil for any concerning changes.

<sup>19</sup> *Id.*

*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. 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 Exchange 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-CBOE-2019-122 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-CBOE-2019-122. 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 this filing will also 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-CBOE-2019-122 and should be submitted on or before January 21, 2020.

### IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>20</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)<sup>21</sup> of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, 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, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission first notes the Exchange's statement that the 17% increase in component securities from July 2019 to November 2019 under MSCI's recent inclusion plans is an isolated departure from the 4.5% average six-month increases the MSCI EM Index has since 2015. Additionally, the Exchange points out that the 10% component-securities threshold was the only threshold implicated as a result of MSCI's inclusion plan, and that the other threshold tests applicable to the EM Index under Rule 4.10(h) will be met as-of January 1, 2020.

Furthermore, the Exchange explains that the 10% component-securities threshold under Rule 4.10(i) is designed to prevent significant adjustments to the number of EM Index constituents, particularly decreases, that could: (i) Reduce component securities in the EM Index to a point that would raise manipulation concerns; or (ii) change the general character of the EM Index over which index options are issued. The Exchange states that the 10% component-securities threshold is designed to allow for the more rapid, shorter-term changes, such as the recent 4.5% average six-month increases the MSCI EM Index has typically and steadily experienced since 2015. The Exchange also does not believe that the EM Index is otherwise easily susceptible to manipulation, as it is a broad-based

index, its component securities have a high market capitalization, it has an average daily volume of over 42 billion, and no single component comprises more than 4.5% of the index. Finally, the Exchange asserts that as a general principle, increases in the elements that make up an index, such as market capitalization and the weight and number component securities, do not in and of themselves lead to manipulation and/or disruption; the Exchange then concludes that this general principle applies to the recent MSCI inclusions of its EM Index.

Based on the foregoing and after careful consideration, the Commission finds it consistent with Exchange Act to allow the Exchange to open for trading any additional series of options of MSCI EM options class notwithstanding the maintenance standard set forth in Rule 4.10(i). The Commission believes that allowing an exception to the 10% component-securities threshold under these specific circumstances is consistent with the purpose behind Rule 4.10, and therefore, is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the increase in component securities under the recent MSCI inclusion plan does not appear likely to lead to market manipulation or disruption. Furthermore, this 17% increase in component securities does not appear to change the general character of the EM Index over which index options are issued. Accordingly, Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act.

The Exchange has requested that Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of in the **Federal Register**. The Exchange represents that, although MSCI announced the inclusion phase-in plan prior to its implementation, the number of component securities actually added (or removed as part of MSCI's regular quarterly reviews) in each phase was unknown until the August 2019 and November 2019 review releases. Furthermore, the Exchange asserts that investors and other market participants will likely be harmed if the Exchange is not able to list new series of weekly or monthly options on the EM Index after January 1, 2020. First, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC; the Exchange believes that OTC poses

<sup>20</sup> In approving this 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>21</sup> 15 U.S.C. 78f(b)(5).

counter party risks for investors that they would not normally otherwise choose to be subject to if series on the EM Index were available for trading. Next, the Exchange states that the inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index (e.g., EEM), options on EEM and EM futures, and European-traded derivatives on the EM Index. Likewise, the Exchange notes that there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, which the Exchange believes would be to the detriment of investors. Additionally, the Exchange states that market participants that wish to roll a position in EM options that expire in January to a position in a series with a later expiration month at a favorable or comparable price, will be prevented from doing so should the Commission not approve this proposal prior to January 1, 2020.

Based on the foregoing, the Commission believes that good cause exists to issue this order approving a one-time exception to the 10% component-securities threshold under Rule 4.10(i) prior to the 30th day after the date of publication of notice of in the **Federal Register**. Approving the proposed rule change on an accelerated basis should protect investors and the public interest from potential harm that might arise from a disruption in the listing of classes of options on the MSCI Emerging Markets Index. Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,<sup>22</sup> the Commission finds good cause to approve the proposed rule change on an accelerated basis.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>23</sup> that the proposed rule change (SR-CBOE-2019-122) be, and it hereby is, approved on an accelerated basis.

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

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87856; File No. SR-CboeBZX-2019-107]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 14.11(m), Portfolio Fund Shares, and To List and Trade Shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF, Each a Series of the Fidelity Beach Street Trust, Under Proposed Rule 14.11(m)

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 12, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to adopt Rule 14.11(m), Portfolio Fund Shares, and to list and trade shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF (each a “Fund” and, collectively, the “Funds”), each a series of the Fidelity Beach Street Trust (the “Trust”), under such proposed Rule 14.11(m). The shares of each Fund are referred to herein as the “Shares.” The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to add new Rule 14.11(m)<sup>3</sup> for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Portfolio Fund Shares, which are securities issued by an actively managed open-end management investment company.<sup>4</sup>

##### Proposed Rule 14.11(m)

Proposed Rule 14.11(m)(3)(A) provides that the term “Portfolio Fund Share” means a security that: (i) Represents an interest in a registered investment company (“Investment Company”) organized as an open-end management investment company or

<sup>3</sup> The Exchange notes that it is proposing new Rule 14.11(m) because it has also proposed a new Rule 14.11(k) and new Rule 14.11(l) under two separate proposals. See Securities Exchange Act Release Nos. 87062 (September 23, 2019), 84 FR 51193 (September 27, 2019) (SR-CboeBZX-2019-047) and 87560 (November 18, 2019), 84 FR 64607 (November 22, 2019) (CboeBZX-2019-097).

<sup>4</sup> The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 (the “Notice”) and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812-14364), issued on December 10, 2019 (the “Order” and, collectively, with the Application and the Notice, the “Exemptive Order”). See Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that “granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.” The Exchange notes that it also referred to the application for exemptive relief orders for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812-14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812-14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812-14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812-15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Portfolio Fund Shares under proposed Rule 14.11(m).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</sup> 17 CFR 200.30-3(a)(12).

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

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