

A proposed rule change filed under Rule 19b-4(f)(6)<sup>25</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>26</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The proposed rule change is substantially similar to other Tracking Fund Shares the Commission previously approved<sup>27</sup> and does not raise any novel regulatory issues. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.<sup>28</sup>

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:

of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>25</sup> 17 CFR 240.19b-4(f)(6).

<sup>26</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>27</sup> See Securities Exchange Act Release No. 88887 (May 15, 2020), 85 FR 30990 (May 21, 2020) (SR-CboeBZX-2019-107) (Notice of Filing of Amendment No. 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 5, to Adopt Rule 14.11(m), Tracking Fund Shares, and to List and Trade Shares of the Fidelity Blue Chip Value ETF, Fidelity Blue Chip Growth ETF, and Fidelity New Millennium ETF). See also Securities Exchange Act Release No. 90530 (November 30, 2020), 85 FR 78366 (December 4, 2020) (SR-CboeBZX-2020-085) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to List and Trade Shares of the Fidelity Growth Opportunities ETF, Fidelity Magellan ETF, Fidelity Real Estate Investment ETF, and Fidelity Small-Mid Cap Opportunities ETF).

<sup>28</sup> 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).

#### 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-CboeBZX-2020-091 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-2020-091. 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-CboeBZX-2020-091 and should be submitted on or before January 12, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>29</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 10905; Release No. 90693]

### Order Approving Public Company Accounting Oversight Board Budget and Annual Accounting Support Fee for Calendar Year 2021

December 16, 2020.

The Sarbanes-Oxley Act of 2002, as amended (the "Sarbanes-Oxley Act"),<sup>1</sup> established the Public Company Accounting Oversight Board ("PCAOB") to oversee the audits of companies that are subject to the securities laws, and related matters, in order to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports. Section 982 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act")<sup>2</sup> amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to oversee auditors of broker-dealers registered with the Securities and Exchange Commission (the "Commission"). The PCAOB is to accomplish these goals through the registration of public accounting firms, standard setting, inspections, and investigation and disciplinary programs. The PCAOB is subject to the comprehensive oversight of the Commission.

Section 109 of the Sarbanes-Oxley Act provides that the PCAOB shall establish a reasonable annual accounting support fee, as may be necessary or appropriate to establish and maintain the PCAOB. Under Section 109(f) of the Sarbanes-Oxley Act, the aggregate annual accounting support fee shall not exceed the PCAOB's aggregate "recoverable budget expenses," which may include operating, capital, and accrued items. The PCAOB's annual budget and accounting support fee are subject to approval by the Commission. In addition, the PCAOB must allocate the annual accounting support fee among issuers and among brokers and dealers.

Section 109(b) of the Sarbanes-Oxley Act directs the PCAOB to establish a budget for each fiscal year in accordance with the PCAOB's internal procedures, subject to approval by the Commission. Rule 190 of Regulation P (the "budget rule") governs the Commission's review and approval of PCAOB budgets and annual accounting support fees.<sup>3</sup> The budget rule provides, among other things, a timetable for the preparation and submission of the PCAOB budget

<sup>1</sup> 15 U.S.C. 7201 *et seq.*

<sup>2</sup> Public Law 111-203, 124 Stat. 1376 (2010).

<sup>3</sup> 17 CFR 202.190.

and for Commission actions related to each budget, a description of the information that should be included in each budget submission, limits on the PCAOB's ability to incur expenses and obligations except as provided in the approved budget, procedures relating to supplemental budget requests, requirements for the PCAOB to furnish on a quarterly basis certain budget-related information, and a list of definitions that apply to the rule and to general discussions of PCAOB budget matters.

In accordance with the budget rule, in March 2020 the PCAOB provided the Commission with a narrative description of its program issues and outlook for the 2021 budget year. In response, the Commission provided the PCAOB with economic assumptions and general budgetary guidance for the 2021 budget year. The PCAOB subsequently delivered a preliminary budget and budget justification to the Commission. Staff from the Commission's Office of the Chief Accountant and Office of Financial Management dedicated a substantial amount of time to the review and analysis of the PCAOB's programs, projects, and budget estimates and attended several meetings with staff of the PCAOB to further develop the understanding of the PCAOB's budget and operations. During the course of this review, Commission staff relied upon representations and supporting documentation from the PCAOB. Based on this review, the Commission issued a "passback" letter to the PCAOB on October 28, 2020. On November 19, 2020, the PCAOB adopted its 2021 budget and accounting support fee during an open meeting, and subsequently submitted that budget to the Commission for approval.

After considering the above, the Commission did not identify any proposed disbursements in the 2021 budget adopted by the PCAOB that are not properly recoverable through the annual accounting support fee, and the Commission believes that the aggregate proposed 2021 annual accounting support fee does not exceed the PCAOB's aggregate recoverable budget expenses for 2021.

Significant uncertainty surrounding the impact of COVID-19 on the PCAOB's operations reinforces the importance of continued coordination between the SEC and PCAOB. The Commission directs the PCAOB during 2021 to continue to schedule monthly meetings, as necessary, with the Commission's staff to discuss important policy initiatives, changes related to program areas, and significant impacts to the PCAOB's 2021 budget, including

significant differences between actual and budgeted amounts and anticipated cost-savings. Separately, the Commission directs the PCAOB to continue its written quarterly updates on recent activities, including strategic initiatives, for the PCAOB's Office of Economic and Risk Analysis, Office of Data, Security, and Technology, and Division of Registration and Inspections. The PCAOB Board will make itself available to meet with the Commissioners on these and other topics. The PCAOB should also submit its 2020 annual report to the Commission by March 31, 2021.

The Commission understands that the Office of Management and Budget ("OMB") has determined that the 2021 budget of the PCAOB is subject to sequestration under the Budget Control Act of 2011.<sup>4</sup> For 2020, the PCAOB sequestered \$16.8 million. That amount will become available in 2021. For 2021, the sequestration amount will be 5.7% or \$16.4 million. Consequently, we expect the PCAOB will have approximately \$0.4 million in excess funds available from the 2020 sequestration for spending in 2021. Accordingly, the PCAOB has reduced its accounting support fee for 2021 by approximately \$0.4 million.

The Commission has determined that the PCAOB's 2021 budget and annual accounting support fee are consistent with Section 109 of the Sarbanes-Oxley Act. Accordingly,

*It is ordered*, pursuant to Section 109 of the Sarbanes-Oxley Act, that the PCAOB budget and annual accounting support fee for calendar year 2021 are approved.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90691; File No. SR-CboeBZX-2020-093]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List and Trade Shares of the ProShares Short VIX Short-Term Futures ETF and the ProShares Ultra VIX Short-Term Futures ETF, Each a Series of ProShares Trust II, Under Rule 14.11(f)(4), Trust Issued Receipts

December 16, 2020.

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> notice is hereby given that on December 14, 2020, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 to list and trade Shares of the ProShares Short VIX Short-Term Futures ETF (the "Short Fund") and the ProShares Ultra VIX Short-Term Futures ETF (the "Ultra Fund", and collectively the "Funds") under Rule 14.11(f)(4), which governs the listing and trading of Trust Issued Receipts<sup>5</sup> on the Exchange.<sup>6</sup> The Exchange notes that the Funds have previously been approved by the Commission and are currently listed on Arca.<sup>7</sup> This proposal is substantively

<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)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> Rule 14.11(f)(4) applies to Trust Issued Receipts that invest in "Financial Instruments." The term "Financial Instruments," as defined in Rule 14.11(f)(4)(A)(iv), means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

<sup>6</sup> The Commission approved BZX Rule 14.11(f)(4) in Securities Exchange Act Release No. 68619 (January 10, 2013), 78 FR 3489 (January 16, 2013) (SR-BATS-2012-044).

<sup>7</sup> See Securities Exchange Act No. 64470 (May 11, 2011) 76 FR 28493 (May 15, 2011) (SR-NYSEArca-

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<sup>4</sup> OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021, February 10, 2020, available at [https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration\\_report\\_FY21\\_2-10-20.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf).