The text of the proposed rule change is available on the Exchange’s Web site at http://nasdaq.cchwallstreet.com, at the principal office of the Exchange, 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 amend the SQF Port Fees in Chapter XV, Section 3 of the NOM Rules. The Exchange recently transitioned to state-of-the-art hardware and software architecture to achieve a more efficient and more robust infrastructure to support the growing needs of our Options Participants (“NOM Refresh”). In connection with this recent NOM Refresh, NOM Market Makers were required to make certain changes to connect to the new NOM System via their SQF Ports. As a result of these changes to NOM, the number of SQF Ports required by NOM Market Makers should be reduced, since a single connection may be utilized to quote across all symbols. The Exchange anticipates that NOM Market Makers will benefit from the efficiency of the service that is available to them as a result of the NOM Refresh.

   The Exchange provided NOM Market Makers with new SQF ports for connectivity so that NOM Market Makers could support our migration from the old to the new SQF Ports during our symbol rollout period. During the months of October and November 2016 (“NOM Refresh Period”) the Exchange offered NOM Market Makers a Fixed SQF Port Fee, which is the amount that was paid by the NOM Market Maker for SQF Ports for the month of August 2016. Currently, NOM Market Makers are not assessed an SQF Port Fee for their use of the new version of the SQF Ports to connect to the new environment during this NOM Refresh Period. As of December 1, 2016, only new SQF Ports were utilized and the old SQF Ports were eliminated.

   At this time, the Exchange is proposing to eliminate the Fixed SQF Port Fee and adopt the following incremental cost model for SQF Port Fees, per port, per month:

   

<table>
<thead>
<tr>
<th>Number of SQF ports</th>
<th>Monthly fee per port</th>
</tr>
</thead>
<tbody>
<tr>
<td>First 5 ports</td>
<td>$1,500 per port.</td>
</tr>
<tr>
<td>Next 15 ports (6–20)</td>
<td>$1,000 per port.</td>
</tr>
<tr>
<td>All ports over 20</td>
<td>$500 per port.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

   For example, if a NOM Market Maker desired 21 SQF Ports in December 2016, the NOM Market Maker would be billed $1,500 for the first 5 ports ($7,500), the next 15 ports will be billed $1,000 ($15,000) and the final port would be billed $500 for a total SQF Port Fee for December of $23,000.

   While NOM Market Makers will be assessed higher fees for each port under 20 ports as compared to the original $750 SQF Port Fee prior to the implementation of the Fixed SQF Port Fee, the Exchange believes that costs will decline overall as a result of the more efficient connectivity offered by the NOM Refresh and the need for fewer ports. The Exchange believes that it continues to offer SQF Ports to NOM Market Makers at competitive prices.

2. Statutory Basis

   The Exchange believes that its proposal is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facility, and is not designed to permit unfair

   

14 For example if a NOM Market Maker obtained 1 new SQF Port to test during the NOM Refresh Period, the NOM Market Maker was not assessed a new SQF Port Fee for that port, but only pay the Fixed SQF Port Fee during the two months. The Exchange notes that it is removing language related to new NOM Market Makers that request SQF Ports after October 3, 2016 would be assessed $750 per port, per month between October 3, 2016 and November 30, 2016. This language is no longer necessary. The Exchange notes that no NOM Market Makers were subject to this fee during the NOM Refresh Period.


16 15 U.S.C. 78b(b)(4) and (5).
discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that market regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”

Likewise, in *NetCoalition v. Securities and Exchange Commission*9 (“NetCoalition”) the D.C. Circuit upheld the Commission’s use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.10 As the court emphasized, the Commission “intended in Regulation NMS that ‘market forces, rather than regulatory requirements’ play a role in determining the market data . . . to be made available to investors and at what cost.”11

Further, “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; and ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker-dealers.’”12 Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

The Exchange believes it is reasonable to assess NOM Market Makers an incremental SQF Port Fee, per port, per month of $1,500 for the first 5 SQF Ports, $1,000 for the next 15 SQF Ports and $500 for any ports over 20 SQF Ports because with the refresh fewer SQF Ports are required to connect to the Exchange. The technology refresh increased the efficiency with which Participants connect to the System. As a result of the refresh, Participants require fewer SQF Ports to connect to the System and therefore this should reduce the number of ports required and lower costs. With the refresh, each NOM Market Maker will be required to have at least 1 port to connect to the match engine as compared to 2 SQF Ports prior to the refresh. NOM Participants may have some technological reasons for desiring additional SQF Ports based on their own technical infrastructure requirements. The Exchange believes that the proposed rates and particularly the number of ports at each price point are reasonable because the Exchange utilized historical port usage and price points to determine comparable pricing. Finally, the Exchange believes that it is reasonable to offer lower rates for a greater amount of ports because all NOM Participants only require one SQF Port. The Exchange believes that since 2 ports were required previously and now only 1 port is required, this pricing results in no cost increase. NOM Market Makers were originally assessed an SQF Port Fee of $750 per port prior to the implementation of the Fixed SQF Port Fee.13 With this proposal, one port which equates to $1,500 per port, the equivalent of 2 ports at $750 per port. The Exchange assesses these fees to cover costs associated with supporting its architecture. The Exchange believes it is reasonable to assess less fees beyond a certain number of ports because the fees are mostly recouped in the first tier. Today, Bats BZX Exchange, Inc. (“BATs BZX”) assesses $1,500, to its market makers for Ports with Bulk Quoting Capabilities,14 which is comparable to the highest priced tier that NOM is proposing for SQF Ports. The Exchange notes that the SQF Ports also have bulk quoting capability.

The Exchange believes it is equitable and not unfairly discriminatory to assess NOM Market Makers an incremental SQF Port Fee, per port, per month of $1,500 for the first 5 SQF Ports, $1,000 for the next 15 SQF Ports and $500 for any ports over 20 SQF Ports because with the refresh fewer SQF Ports are required to connect to the Exchange.

9 NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010).
10 See NetCoalition, at 534–535.
11 Id. at 537.
14 See Bats BZX Options Exchange Fee Schedule.
III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.15 At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

• Use the Commission’s Internet comment form (http://www.sec.gov/rules/sro.shtml); or
• Send an email to rule-comments@.sec.gov. Please include File Number SR–NASDAQ–2016–178 on the subject line.

Paper Comments

• Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number SR–NASDAQ–2016–178. 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 Web site (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 Web site 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–178 and should be submitted on or before January 17, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.16

Eduardo A. Aleman, Assistant Secretary.

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BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Bats BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to BZX Rule 14.11(i), Managed Fund Shares, To List Shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETFs

December 20, 2016.

Pursuant to Section 19(b)(1) 1 of the Securities Exchange Act of 1934 (“Act”)2 and Rule 19b–4 thereunder,3 notice is hereby given that, on December 13, 2016, Bats 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 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 filed a proposal to list shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETF under Rule 14.11(i) (“Managed Fund Shares”), which are currently listed on NYSE Arca, Inc. (“Arca”). The shares of the Fund are referred to herein as the “Shares.”

The text of the proposed rule change is available at the Exchange’s Web site at www.batstrading.com, at the principal office of the Exchange, 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 parts of such statements.

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

1. Purpose

The Exchange proposes to list shares of the Cambria Sovereign High Yield Bond ETF and the Cambria Value and Momentum ETF under Rule 14.11(i), (“Managed Fund Shares”), (each, a “Fund” and, collectively, the “Funds”),4 which governs the listing and trading of Managed Fund Shares on the Exchange.5 The Exchange notes that both of the Funds are already trading on the Exchange pursuant to unlisted trading privileges, as provided in Rule 14.11(i).

The Shares will be offered by the Cambria ETF Trust (the “Trust”), which is organized as a Delaware statutory trust and is registered with the

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5 The Exchange notes that the Commission previously approved a proposal to list and trade shares of the Funds on Arca. See Securities Exchange Act Release No. 75540 (July 28, 2015), 80 FR 46359 (August 4, 2015) (SR–NYSEArca–2015–56) (the “Prior Proposal”). This proposal is substantively identical to the Prior Proposal and the issuer represents that all material representations contained within the Prior Proposal remain true. As further described below, the Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange’s surveillance procedures for derivative products, including Managed Fund Shares.