

19b-4(f)(6)(iii)²⁰ permits the Commission to 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 so that the proposal may become operative immediately upon filing. The Exchange states that immediately codifying its current practice within its rules to accurately reflect the operation of the Exchange's System will avoid confusion. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change as operative upon filing.²¹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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-MRX-2018-36 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-MRX-2018-36. 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-MRX-2018-36 and should be submitted on or before January 2, 2019.

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

Eduardo A. Aleman,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33318; 812-14902]

Cliffwater Corporate Lending Fund and Cliffwater LLC

December 6, 2018.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c-3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, early withdrawal charges ("EWCs") and early repurchase fees.

Applicants: Cliffwater Corporate Lending Fund (the "Initial Fund") and Cliffwater LLC (the "Adviser").

Filing Dates: The application was filed on April 27, 2018, and amended on September 28, 2018.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail.

Hearing requests should be received by the Commission by 5:30 p.m. on December 31, 2018, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090; Applicants: 4640 Admiralty Way, 11th Floor, Marina del Rey, CA 90292.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 551-6817, or Kaitlin C. Bottock, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at <http://www.sec.gov/search/search.htm> or by calling (202) 551-8090.

Applicants' Representations

1. The Initial Fund is a Delaware statutory trust that is registered under the Act as a non-diversified, closed-end management investment company. The Initial Fund's primary investment objective is to seek consistent current income. Capital preservation will be considered a secondary objective.

2. The Adviser, a Delaware limited liability company, is registered as an

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

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

²² 17 CFR 200.30-3(a)(12).

investment adviser under the Investment Advisers Act of 1940, as amended. The Adviser will serve as investment adviser to the Initial Fund.

3. The applicants seek an order to permit the Initial Fund to issue multiple classes of shares and to impose asset-based distribution and/or service fees and EWCs.

4. Applicants request that the order also apply to any continuously offered registered closed-end management investment company that has been previously organized or that may be organized in the future for which the Adviser, or any entity controlling, controlled by, or under common control with the Adviser, or any successor in interest to any such entity,¹ acts as investment adviser and which operates as an interval fund pursuant to rule 23c-3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Securities Exchange Act of 1934 ("Exchange Act") (each, a "Future Fund" and together with the Initial Fund, the "Funds").²

5. The Initial Fund anticipates making a continuous public offering of its shares in connection with its registration statement. Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds will not be listed on any securities exchange nor quoted on any quotation medium. The Funds do not expect there to be a secondary trading market for their shares.

6. If the requested relief is granted, the Initial Fund anticipates offering Class A Shares and Class I Shares. Each of the Class A Shares and Class I Shares will have their own fee and expense structure. The Funds may in the future offer additional classes of shares and/or another sales charge structure. Because of the different distribution fees, services and any other class expenses that may be attributable to each class of shares, the net income attributable to, and the dividends payable on, each class of shares may differ from each other.

7. Applicants state that, from time to time, the Fund may create additional classes of shares, the terms of which may differ from the initial classes

pursuant to and in compliance with rule 18f-3 under the Act.

8. Applicants state that shares of a Fund may be subject to an early repurchase fee ("Early Repurchase Fee") at a rate of no greater than 2% of the shareholder's repurchase proceeds if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year. Any Early Repurchase Fees will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f-3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so consistently with the requirements of rule 22d-1 under the Act as if the Early Repurchase Fee were a CDSL (defined below) and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of class. Applicants state that the Initial Fund does not intend to impose an Early Repurchase Fee.

9. Applicants state that the Initial Fund has adopted a fundamental policy to repurchase a specified percentage of its shares at net asset value on a quarterly basis. Such repurchase offers will be conducted pursuant to rule 23c-3 under the Act. Any Future Funds will likewise adopt fundamental investment policies and make periodic repurchase offers to its shareholders in compliance with rule 23c-3 or will provide periodic liquidity with respect to its shares pursuant to rule 13e-4 under the Exchange Act.³ Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund.

10. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of the FINRA Rule 2341(d) ("FINRA Sales Charge Rule").⁴ Applicants also represent that each Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N-1A. As is required for open-end funds, each Fund will disclose its expenses in shareholder

reports, and describe any arrangements that result in breakpoints in or elimination of sales loads in its prospectus.⁵ In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.⁶

11. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

12. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of that Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution plan of that class (if any), service fees attributable to that class (if any), including transfer agency fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f-3 under the Act as if it were an open-end investment company.

13. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the EWC (and any waivers or scheduled variations, or elimination of the EWC) uniformly to all shareholders

¹ A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

² Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

³ Applicants submit that rule 23c-3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act of 1933, as amended.

⁴ Any reference to the FINRA Sales Charge Rule includes any successor or replacement to the FINRA Sales Charge Rule.

⁵ See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

⁶ Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). See also Rules 12d1-1, *et seq.* of the Act.

in a given class and consistently with the requirements of rule 22d-1 under the Act as if the Funds were open-end investment companies.

14. Each Fund operating as an interval fund pursuant to rule 23c-3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with such Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c-3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, "Other Funds"). Shares of a Fund operating pursuant to rule 23c-3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c-3 under the Act. Any exchange option will comply with rule 11a-3 under the Act, as if the Fund were an open-end investment company subject to rule 11a-3. In complying with rule 11a-3, each Fund will treat an EWC as if it were a contingent deferred sales load ("CDSL").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section

18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f-3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f-3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c-3 under the Act permits an "interval fund" to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c-3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably

intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c-3 to the extent necessary for the Funds to impose EWCs on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c-10 under the Act. Rule 6c-10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c-10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c-10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N-1A concerning CDSLs.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d-1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d-1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d-3 under the Act provides an exemption from section 17(d) and rule 17d-1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b-1 under the Act. Applicants request an order under section 17(d) and rule 17d-1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b-1 and 17d-3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution fees.

3. For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c-10, 12b-1, 17d-3, 18f-3, 22d-1, and, where applicable, 11a-3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,
Assistant Secretary.

[FR Doc. 2018-26797 Filed 12-11-18; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84738; File No. SR-ChoeBZX-2018-079]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1, To Establish How the BZX Official Closing Price Would Be Determined for BZX-Listed Securities

December 6, 2018.

I. Introduction

On October 18, 2018, 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"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend how the BZX Official Closing price would be determined for BZX-listed securities that are not corporate securities if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot.³ The proposed rule change was published for comment in the **Federal Register** on November 5, 2018.⁴ The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal, as Modified by Amendment No. 1

The Exchange proposes to amend BZX Rule 11.23(c)(2)(B) to change how it would determine the BZX Official Closing Price⁵ for an Exchange-listed security that is not a corporate security ("Derivative Securities Product") if the Exchange does not conduct a Closing Auction or if a Closing Auction trade is less than a round lot. Current Rule 11.23(c)(2)(B) provides that in the event that there is no Closing Auction for a BZX-listed security, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On October 29, 2018, the Exchange filed Amendment No. 1 to the proposed rule change to specify the date upon which the Exchange's President (or designee) approved the proposed rule change, pursuant to delegated authority.

⁴ See Securities Exchange Act Release No. 84507 (October 30, 2018), 83 FR 55435 ("Notice").

⁵ See BZX Rule 11.23(a)(3) (defining the term "BZX Official Closing Price" as the price disseminated to the consolidated tape as the market center closing trade).

⁶ As defined in BZX Rule 11.23(a)(9), the term "Final Last Sale Eligible Trade" means the last trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction

Exchange proposes to amend this provision to provide that for Derivative Securities Products only, in the event there is no Closing Auction, or if less than a round lot was executed in the Closing Auction, the BZX Official Closing Price will depend upon when the Final Last Sale Eligible Trade in that security occurred.

Specifically, if the Final Last Sale Eligible Trade occurred within the final five minutes before the end of Regular Trading Hours, the Final Last Sale Eligible Trade will be the BZX Official Closing Price.⁷ However, if such trade occurred prior to the last five minutes before the end of Regular Trading Hours, the time-weighted average price of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing Price.⁸

If the BZX Official Closing Price cannot be determined under proposed BZX Rule 11.23(c)(2)(B)(i) or (ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.⁹ If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used.¹⁰

The Exchange states that it will implement the proposed rule change as soon as is practicable after the Commission's approval and will announce the implementation date via Trade Desk Notice.¹¹

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6 of the Act¹² and the rules and regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be designed to

or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used.

⁷ See proposed BZX Rule 11.23(c)(2)(B)(ii)(a).

⁸ See proposed BZX Rule 11.23(c)(2)(B)(ii)(b).

⁹ See proposed BZX Rule 11.23(c)(2)(B)(iii).

¹⁰ See BZX Rule 11.23(a)(9).

¹¹ See Notice, *supra* note 4, at 55436.

¹² 15 U.S.C. 78f(b).

¹³ In approving this proposed rule change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).