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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86463; File No. SR-CboeBZX-2019-065)

July 24, 2019

Self-Regulatory Organizations; ; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule Applicable to Members and non-Members of the Exchange Pursuant to BZX Rules 15.1(a) and (c)

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members⁴ of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is attached [sic] as Exhibit 5.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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/), 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 amend its fee schedule applicable to its equities trading platform ("BZX Equities") to modify Step-Up Tier 3.⁵

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a "Maker-Taker" model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's Fees Schedule sets forth the standard rebates

⁵ The Exchange initially filed the proposed fee change on July 1, 2019 (SR-CboeBZX-2019-063), effective July 1, 2019. On business date July 12, 2019, the Exchange withdrew that filing and submitted this filing.

and rates applied per share for orders that provide and remove liquidity, respectively.

Particularly, for orders priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity⁶ and assesses a fee of \$0.0025 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, pursuant to footnote 2 of the Fees Schedule, the Exchange offers five Step-Up Tiers that provide Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Under the current Step-Up Tiers, a Member receives a rebate of \$0.0030 (Tier 1 and Tier 2), \$0.0031 (Tier 3 and Tier 4), or \$0.0032 (Tier 5) per share for qualifying orders which yield fee codes B,⁷ V,⁸ or Y⁹ if the corresponding required criteria per tier is met.¹⁰ Step-Up Tiers 1 – 5 also each require that Members reach certain Step-Up Add TCV thresholds. As currently defined in the BZX Equities fee schedule, Step-Up Add TCV means ADAV¹¹ as a percentage of

⁶ Displayed Orders which add liquidity in Tape B securities receive a standard rebate of \$0.0025 per share.

⁷ Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

⁸ Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

⁹ Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

¹⁰ See Cboe BZX U.S. Equities Fees Schedule, Footnote 2, Step-Up Tiers.

¹¹ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

TCV¹² in the relevant baseline month subtracted from current ADAV as a percentage of TCV.¹³

The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

The Exchange now proposes to modify Step-Up Tier 3 to update the predetermined baseline, ease the ADAV threshold and increase the corresponding rebate. Currently, Step-Up Tier 3 provides that a Member will receive a rebate of \$0.0031 per share for their qualifying orders which yield fee codes B, V, or Y where the (1) MPID has a Step-Up Add TCV from January 2018 greater or equal to 0.30% and (2) MPID has an ADAV as a percentage of TCV greater than or equal to 0.45%. The Exchange proposes to modify the required criteria to provide that the Member must have an MPID that (1) has a Step-Up Add TCV from May 2019 (instead of January 2018) greater than or equal to 0.10% (instead of 0.30%) and (2) has an ADAV as a percentage of TCV greater than or equal to 0.25% (instead of 0.45%). The Exchange also proposes to increase the rebate from \$0.0031 per share to \$0.0032 per share. The proposed changes intend to ease the tier's current criteria and use a more recent month for the predetermined baseline, which the Exchange believes is more representative of current volume trends for market participants. The Exchange hopes these changes will encourage those Members

¹² "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹³ The following demonstrates how Step-Up Add TCV is calculated: In December 2018, Member A had an ADAV of 12,947,242 shares and average daily TCV was 9,248,029,751, resulting in an ADAV as a percentage of TCV of 0.14%; In February 2019, Member A had an ADAV of 46,826,572 and average daily TCV was 7,093,306,325, resulting in an ADAV as a percentage of TCV of 0.66%. Member A's Step-Up Add TCV from December 2018 was therefore 0.52% which makes Member A eligible for the existing Step-Up Tier 4 rebate. (i.e., 0.66% (Feb 2019) – 0.14% (Dec 2018), which is greater than 0.50% as required by current Tier 4).

who could not achieve the tier previously to increase their order flow as a means to receive the tier's enhanced (and increased) rebate. To achieve the Step-Up Tier 3, even as modified, Members are still required to increase the amount of liquidity that they provide on BZX on an MPID basis, thereby contributing to a deeper and more liquid market, which benefits all market participants. The proposed change continues to provide Members an opportunity to receive a rebate and is designed to provide Members that provide displayed liquidity on the Exchange a further incentive to increase that order flow, which would benefit all Members by providing greater execution opportunities on the Exchange. The Exchange notes the tier, as modified, continues to be available to all Members.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4),¹⁵ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁶ 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 and perfect the mechanism of a free and open market and a national market system, and, in general, to protect

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

¹⁶ 15 U.S.C. 78f(b)(5).

investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed changes to Step-Up Tier 3 are reasonable because the tier continues to provide an opportunity for Members to receive an enhanced rebate. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁷, including the Exchange¹⁸, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently

¹⁷ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers.

¹⁸ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1-4.

comparable to those that the Exchange provides, including the pricing of comparable tiers.¹⁹

Moreover, the Exchange believes the Step-Up Tier 3 continues to be a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline and providing liquidity based on the ADAV threshold requirement on an MPID basis. As noted above, the proposed changes are designed to, overall, ease Step-Up Tier 3's current criteria which the Exchange hopes will encourage those Members who could not achieve the tier previously to increase their order flow as a means to receive the tier's enhanced (and increased) rebate. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that the proposed rebate is still reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed rebate and threshold appropriately reflects the incremental difficulty to achieve the existing Step-Up Tiers. The proposed rebate amount also does not represent a significant departure from the rebates currently offered under the Exchange's existing Step-Up Tiers. Indeed, the proposed rebate amount is the same offered as Step-Up Tier 5 (i.e., \$0.0032 per share) and only slightly higher than the rebates offered under Step-Up Tiers 1, 2, and 4 (i.e., \$0.0030 and \$0.0031 per share).

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed tier and have a reasonable opportunity to meet the tier's criteria, which is less stringent than current Step-Up

¹⁹ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

Tier 3 Without having a view of Members' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any Members qualifying for this tier. However, based on this month's data to date, the Exchange expects two or more Members would be able to satisfy the tier as amended (whereas if Step-Up Tier 3 were unchanged, only one Member would be expected to satisfy the current criteria). The Exchange believes the proposed lower ADAV requirement and proposal to use May 2019 as the predetermined baseline would provide an incentive for additional market participants to increase their adding liquidity each month in order to meet the new requirements and receive the increased rebate. The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would apply to all Members that meet the required criteria under Step-Up Tier 3.

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

The Exchange does not believe that the proposed rule change will not impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among

orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”²⁰

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier and will all receive the proposed rebate if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier would incentivize market participants to direct providing displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues, including 32 alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 23% of the market share.²¹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover,

²⁰ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

²¹ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current 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.”²² The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[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’....”²³ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²³ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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) of the Act²⁴ and paragraph (f) of Rule 19b-4²⁵ thereunder. 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:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-065 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-2019-065. This file number should be included on the subject line if e-mail is used. To help the Commission process and

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f).

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-2019-065 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Jill M. Peterson
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).

