



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90569; File No. SR-CboeBZX-2020-088]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Fee Schedule to Update the Add Volume Tiers, to Eliminate the Remove Volume Tier, and to Eliminate Unused Fee Codes December 4, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 2, 2020, 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. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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: 1) update the Add Volume Tiers, 2) eliminate the Remove Volume Tier, and 3) eliminate unused fee codes.³

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 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. 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 fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity and orders that are routed. For orders priced below

³ The Exchange initially filed the proposed fee changes on December 1, 2020 (SR-CboeBZX-2020-087). On December 2, 2020, the Exchange withdrew that filing and submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 27, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

\$1.00, the Exchange provides a standard rebate of \$0.0009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity and for orders that are routed. Additionally, 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.

Proposed Updates to the Add Volume Tiers

The Exchange currently offers six Add Volume Tiers under footnote 1 of the Fee Schedule. The Add Volume Tiers provide Members with opportunities to receive incrementally increasing enhanced rebates for their liquidity adding orders that yield fee codes “B”⁵, “V”⁶, and “Y”⁷, upon reaching incrementally more difficult criteria under each tier. The Exchange proposes to amend Tier 1 and remove Tier 3 (and renumber the remaining tiers accordingly).

Particularly Tier 1 offers an enhanced rebate of \$0.0025 for qualifying orders (i.e., yielding fee codes B, V or Y) where a Member has an ADAV⁸ greater or equal to 1,000,000. The Exchange proposes to increase the ADAV requirement to 3,000,000. The Exchange notes Tier 1, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate, albeit using a more stringent criteria. Moreover, the proposed change is designed to encourage Members to increase order flow on the Exchange in order to receive the corresponding rebate, which further contributes to a deeper, more liquid

⁵ Appended to displayed orders that adds liquidity to BZX (Tape B) and is assessed a standard rebate of \$0.0025.

⁶ Appended to displayed orders that adds liquidity to BZX (Tape A) and is assessed a standard rebate of \$0.0025.

⁷ Appended to displayed orders that adds liquidity to BZX (Tape C) and is assessed a standard rebate of \$0.0025.

⁸ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

market and provides even more execution opportunities for active market participants at improved prices.

Tier 3 offers an enhanced rebate of \$0.0028 for qualifying orders where a Member has an ADAV as a percentage of TCV greater than or equal to 0.20%. The Exchange proposes to eliminate the 3 Tier as it no longer wishes to, nor is it required to, maintain such tier. More specifically, the proposed rule change removes this tier as the Exchange would rather redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

Remove Volume Tier

The Exchange also proposes to eliminate Remove Volume Tier, which offers a reduced fee of \$0.0029 for orders in securities at or above \$1.00 and 0.28% of total dollar value for orders in securities below \$1.00 yielding fee code “N”, “W” and “BB” where a Member has an ADAV greater than or equal to 0.20% TCV with displayed orders that yield fee codes B, V or Y. The Exchange proposes to eliminate the Remove Volume Tier as it no longer wishes to, nor is it required to, maintain such tier. More specifically, the proposed rule change removes this tier as the Exchange would rather redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

Elimination of Certain Routing Fee Codes

The Exchange assesses fees in connection with orders routed away to various exchanges. The Exchange proposes to eliminate several routing-related fee codes that have been unused for several years. Particularly, the Exchange proposes to eliminate the following fee codes:

- Fee Code 9, which is appended to orders routed to NYSE Arca and adds liquidity (Tapes A or C) and provides a rebate of \$0.00210 per share for securities priced at or above \$1.00 and are free for securities priced below \$1.00;
- Fee Code NB, which is appended to orders routed to any exchange not covered by Fee Code NA and adds non-displayed liquidity and assesses a fee of \$0.00300 per share for

securities priced at or above \$1.00 and a fee of 0.30% of dollar value for securities priced below \$1.00;

- Fee Code R, which is appended to orders re-routed by NYSE and assesses a fee of 0.00300 per share;
- Fee Code RA, which is appended to orders re-routed to EDGA and adds liquidity and assess a fee of 0.00300 per share for securities priced at or above \$1.00 and are free for securities priced below \$1.00; and
- Fee Code RB, which is appended to orders routed to BX and adds liquidity and assess a fee of 0.00200 per share for securities priced at or above \$1.00 and are free for securities priced below \$1.00.

As noted, above the Exchange has observed no volume in recent years in orders yielding fee codes 9, NB, R, RA and RB. The Exchange believes that because no Members elect to route their orders that yield these fee codes, the current demand (or lack thereof) does not warrant the infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of transactions. Therefore, the Exchange now proposes to delete fee codes 9, NB, R, RA and RB in the Fee Schedule. The Exchange notes that Members will continue to be able to choose to route their orders to any exchange covered by these fee codes and such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (e.g., the standard fees applied to routed orders, which yields fee code X).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

among its Members, issuers and other persons using its facilities. 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 changes reflect 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. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, 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 market activity, such as higher levels of liquidity provision and/or 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, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and/or fees and rebates.

In particular, the Exchange believes the proposed changes to Tier 1 is reasonable because Tier 1 as modified continues to be available to all Members and provides Members an opportunity to receive an enhanced rebate, albeit using more stringent criteria. The Exchange next notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, 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 market activity, such as higher levels of liquidity provision and/or growth patterns. 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 thresholds.¹¹ These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.

The Exchange also notes that the enhanced rebate available under Tier 1 is not changing and further believes that the current enhanced rebate continues to be commensurate with the required criteria, even as amended. Furthermore, the Exchange believes the enhanced rebates under each Add Volume Tier continue to reasonably reflect the difficulty in achieving the corresponding criteria, even as amended.

The Exchange believes the proposed change is also a reasonable means to incentivize Members to continue to provide liquidity adding, displayed volume, which will benefit all market participants by incentivizing continuous liquidity and thus, deeper more liquid markets as well as increased execution opportunities. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed amended tier. The Exchange notes that most recently, eleven Members satisfied Tier 1. While the Exchange has no way of predicting with certainty

¹¹ See, e.g., Cboe EDGX Equities Fees Schedule, Footnote 1 which provides various Add Volume Tiers.

how the proposed tier will impact Member activity, the Exchange anticipates that approximately three Members will be able to satisfy Tier 1 as amended. The Exchange also notes that the proposed amended tier will not adversely impact any Member's ability to qualify for other rebate tiers. Rather, should a Member not meet the criteria for Tier 1, as amended, the Member will merely not receive the corresponding proposed enhanced rebate. Furthermore, the proposed rebate would uniformly apply to all Members that meet the required criteria.

The Exchange also believes the proposal to remove Add Volume Tier 3 is reasonable because the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed adding liquidity orders, including via the existing add volume tiers. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tier won't be available for any Member). The Exchange notes that recently two Members had satisfied the criteria of Add Volume Tier 3. The Exchange also notes that the proposed change does not preclude any Member, including the Members that were receiving the rebates under this tier, from achieving the remaining add volume tiers to qualify for the remaining enhanced rebates or other available enhanced rebates under other incentive tiers.¹² Additionally, those Members are still entitled to a rebate for its displayed orders adding liquidity (i.e., the standard rebate), albeit a rebate that is lower than the amount under Add Volume Tier 3. The Exchange also notes that the proposed rule change to remove Add Volume Tier 3 merely results in Members not receiving the enhanced rebate, which as noted above, the Exchange is not required to offer or maintain.

Similarly, the Exchange believes the proposal to eliminate the Remove Volume Tier is reasonable because the Exchange is not required to maintain this tier or provide Members an opportunity to receive reduced fees. The Exchange believes the proposal to eliminate this tier is

¹² See, e.g., Cboe BZX Equities Fee Schedule, Footnote 1, which provides various Add/Remove Volume Tiers applicable to fee codes B, V, and Y.

also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tier won't be available for any Member). The Exchange notes that recently seven Members had satisfied the criteria of Remove Volume Tier. The Exchange also notes that the proposed rule change to remove the Remove Volume Tier merely results in Members not receiving a reduced fee, which as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate both the Add Volume Tier 3 and the Remove Volume Tier enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange also believes the proposed rule change to remove fee codes 9, NB, R, RA and RB is reasonable as the Exchange has observed no volume in orders yielding these fee codes and, therefore, the Exchange believes the proposed change will have a de minimis impact. Additionally, the Exchange believes that infrastructure and ongoing Systems maintenance required to support separate fee codes specifically applicable to these types of routed orders is not warranted or necessary in light of the fact that it has not received any recent volume yielding these fee codes. As noted above, to the extent volume for transactions currently covered by these fee codes ever increases, such orders will be automatically and uniformly assessed the current fees (or rebates) in place for routed orders, as applicable (e.g., the standard fees applied to routed orders, which yield fee code X). Finally, the Exchange believes that the proposed elimination of the fee codes is equitable and not unfairly discriminatory as it applies equally to all members that use the Exchange to route orders. If members do not favor the Exchange's pricing for routed orders, they can send their routable orders directly to away markets instead of using routing functionality provided by the Exchange. Routing through the Exchange is voluntary, and the Exchange operates in a competitive environment where market participants can readily direct order flow to competing venues or providers of routing services if they deem fee levels to be excessive.

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

The Exchange does not believe that the proposed rule change will impose any burden on 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 to Add Volume 1 would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency 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."¹³

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 changes apply to all Members equally in that all Members will continue to be eligible for Add Volume tier 1 and have a reasonable opportunity to meet the tier's criteria and will all receive the corresponding additional rebate if such criteria is met. Additionally, the proposed tier change is designed to attract additional order flow to the Exchange. The Exchange believes that the updated tier criteria would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange does not believe the proposed rule change to eliminate Add Volume Tier 3, the Remove Volume Tier,

¹³ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

and the unused routing fee codes will impose any burden on intramarket competition because it applies to all Members uniformly.

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 15 other equities exchanges and off-exchange venues and 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 16% of the market share. 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, 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.”¹⁴ 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

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

execution of order flow from broker dealers'".¹⁵ 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 neither solicited nor received comments on the proposed rule change.

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 Act¹⁶ and paragraph (f) of Rule 19b-4 thereunder.¹⁷ 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-2020-088 on the subject line.

¹⁵ 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)).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

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-2020-088. This file number should be included on the subject line if e-mail 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-2020-088 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.¹⁸

J. Matthew DeLesDernier,

Assistant Secretary.

¹⁸ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-27088 Filed: 12/9/2020 8:45 am; Publication Date: 12/10/2020]