



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91479; File No. SR-CboeBZX-2021-023]

### **Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Extend the Cutoff Time for Accepting on Close Orders Entered for Participation in the Exchange’s Closing Auction and to Clarify Changes to the Definitions of Late-Limit-On-Close and Late-Limit-On-Open Orders as Provided in Exchange Rule 11.23**

April 5, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2021, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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”) proposes to extend the cutoff time for accepting on close orders entered for participation in the Exchange’s Closing Auction and make clarifying changes to the definitions of Late-Limit-On-Close (“LLOC”) and Late-Limit-On-Open (“LLOO”) orders as provided in Exchange Rule 11.23. The text of the proposed rule change is provided in Exhibit 5.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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/](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 purpose of the proposed rule change is to extend the cutoff time for accepting on close orders entered for participation in the Exchange's Closing Auction.<sup>3</sup> Additionally, the Exchange proposes to make clarifying changes to the definition of Late-Limit-On-Close ("LLOC")<sup>4</sup> and Late-Limit-On-Open ("LLOO")<sup>5</sup> as provided in Exchange Rules 11.23(a)(11) and (12), respectively.

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<sup>3</sup> See Exchange Rule 11.23(c).

<sup>4</sup> The term "Late-Limit-On-Close" or "LLOC" shall mean a BZX limit order that is designated for execution only in the Closing Auction. To the extent a LLOC bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOC bid or offer, respectively, will assume its entered limit price. See Exchange Rule 11.23(a)(11).

<sup>5</sup> The term "Late-Limit-On-Open" or "LLOO" shall mean a BZX limit order that is designated for execution only in the Opening Auction. To the extent a LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original

Currently, Users may submit Market-On-Close (“MOC”)<sup>6</sup> and Limit-On-Close (“LOC”)<sup>7</sup> [sic] until 3:55 p.m. ET (“Closing Auction Cutoff”), at which point any additional MOC and LOC orders are rejected. Similarly, Users may submit LLOC orders between the Closing Auction Cutoff (i.e., 3:55 p.m.) and 4:00 p.m. ET. Any LLOC orders submitted before 3:55 p.m. or after 4:00 p.m. are rejected. Further, Eligible Auction Orders designated for the Closing Auction may not be cancelled between 3:55 p.m. and 4:00 p.m. The Exchange’s Closing Auction provides a transparent auction process that determines a single price for the close. As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that the current Closing Auction Cutoff is overly restrictive to market participants that wish to participate in the Exchange’s Closing Auction and that typically have to tie up on close interest for five minutes or more at the end of the trading day to participate in the Closing Auction. Therefore, the Exchange proposes to modify Rule 11.23(c)(1)(A) to provide that Users may submit LOC and MOC orders until 3:59 p.m., at which point any additional LOC and MOC orders submitted will be rejected. Additionally, that the Exchange proposes to modify Rule 11.23(c)(1)(A) to provide that Users may submit LLOC orders between 3:59 p.m. and 4:00 p.m. and any LLOC orders submitted before 3:59 p.m. or after 4:00 p.m. will be rejected. The Exchange also proposes to modify Rule 11.23(c)(1)(B) to provide that Eligible Auction Orders designated for the Closing Auction may not be canceled between 3:59 and 4:00 p.m. The Exchange believes that this proposed change will enhance the experience

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User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOO bid or offer, respectively, will assume its entered limit price. Notwithstanding the foregoing, a LLOO order entered during the Quote-Only Period of an IPO will be converted to a limit order with a limit price equal to the original User entered limit price and any LLOO orders not executed in their entirety during the IPO Auction will be cancelled upon completion of the IPO Auction. See Exchange Rule 11.23(a)(12).

<sup>6</sup> The term “Market-On-Close” or “MOC” shall mean a BZX market order that is designated for execution only in the Closing Auction or Cboe Market Close. See Exchange Rule 11.23(a)(15).

<sup>7</sup> The term “Limit-On-Close” or “LOC” shall mean a BZX limit order that is designated for execution only in the Closing Auction. See Exchange Rule 11.23(a)(13).

provided to market participants who will be able to enter and interact with their on close orders later in the trading day. Similar to cutoffs provided by another equities exchange that operates a closing auction, the Exchange believes that the proposed Closing Auction Cutoff would give Participants greater control over their on close orders while still leaving enough time at the end of the trading day for market participants to react to and offset imbalances. Further, NYSE Arca, Inc. (“Arca”), already uses a 3:59 p.m. ET cutoff for regular MOC/LOC order entry in its closing auction, and the Exchange believes that this cutoff time reflects the efficiency and more automated nature of trading in today’s market.<sup>8</sup>

The Exchange also proposes to amend the definitions of the LLOC and LLOO as provided in Rules 11.23(a)(11) and (12), respectively. The definitions of LLOC and LLOO provide that to the extent a LLOC or LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the National Best Bid (“NBB”),<sup>9</sup> or National Best Offer (“NBO”),<sup>10</sup> the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC or LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. In addition, the current definitions provide that the limit price will “never” be adjusted to a less aggressive price.

Now, the Exchange proposes to amend Rules 11.23(a)(11) and (12) to provide that the limit price will not be adjusted to a less aggressive price, unless otherwise provided under Exchange Rules, rather than “never” be adjusted to a less aggressive price. In certain instances the System<sup>11</sup> may adjust the limit price to a less aggressive price if otherwise provided for by Exchange Rules. For example, assume a short sale LLOO or LLOC order was entered at a price

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<sup>8</sup> See Arca Rule 7.35-E(d)(2).

<sup>9</sup> See Exchange Rule 1.5(o).

<sup>10</sup> Id.

<sup>11</sup> See Exchange Rule 1.5(aa).

less than the NBB while a short sale circuit breaker pursuant to Regulation SHO (the “SCCB”)<sup>12</sup> was in effect. Pursuant to Rules 11.9(g)(5) and (6), the LLOO or LLOC order would be re-priced by the System at one minimum price variation above the NBB. If the NBB then increased, the limit price of the LLOO or LLOC would again be re-priced by the System to the less aggressive price of one minimum price variation above the new NBB. Given the foregoing, the Exchange is proposing to amend the Rule text to provide that the limit price will not update to a less aggressive price, unless otherwise provided by Exchange Rules, rather than will “never” update to a less aggressive price. Therefore, the proposed change is intended to provide that LLOO or LLOC orders may be re-priced if otherwise provided by Exchange Rules, such as pursuant to the Reg SHO price sliding.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> 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 investors and the public interest. Additionally, the Exchange believes the proposed rule change

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<sup>12</sup> See 17 CFR 242.201; Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that extending the Closing Auction Cutoff for submitting on close orders will allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close. While the Exchange currently has a Closing Auction Cutoff of 3:55 p.m., the Exchange does not believe five minutes is necessary for market participants to respond to and offset imbalances. In fact, in the Commission's approval order for a similar proposal by the Nasdaq Stock Market, LLC ("Nasdaq"),<sup>16</sup> the Commission stated that it "believes that extending these cutoff times would allow Exchange participants to retain flexibility with respect to entering, modifying, and cancelling their on close orders until a later time, while still providing time for Exchange participants to react and resolve imbalances in the Nasdaq Closing Cross."<sup>17</sup> Further, the Commission stated that it believes Nasdaq's proposal could encourage participation in the Nasdaq Closing Cross by market participants who are unwilling to give up flexibility and control over their on close orders at 3:50 p.m. The Exchange believes that market participants would be better served if the Closing Auction Cutoff was extended to 3:59 p.m. so that the period of time where market participants have limited control over their orders is reduced. The Exchange believes that this will reduce risk for market participants that participate in the Exchange's Closing Auction, and improve price discovery by facilitating additional participation by market participants that may not be willing to lose control over their on close interest for five minutes.

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<sup>15</sup> Id.

<sup>16</sup> See Securities Exchange Act [sic] No. 84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-NASDAQ-2018-068) (Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Extend the Cutoff Times for Accepting on Close Orders Entered for Participation in the Nasdaq Closing Cross and to Make Related Changes).

<sup>17</sup> Nasdaq proposed to extend the cutoff time from 3:50 p.m. to 3:55 p.m.

The Exchange further believes that the proposal to extend the Closing Auction Cutoff would remove impediments to and perfect the mechanism of free and open markets and a national market system because it would more closely align the Exchange's Closing Auction Cutoff time with those of another equity exchange. For example, Arca already uses a 3:59 p.m. cutoff for regular MOC/LOC order entry in its closing auction and the Exchange believes that this cutoff time reflects the efficiency and more automated nature of trading in today's market.<sup>18</sup> The Exchange, therefore, believes that there is sufficient precedent in the industry for extending the Closing Auction Cutoff time to 3:59 p.m. as proposed. The Exchange also believes that the proposal would promote just and equitable principles of trade because the proposed rule change would not alter the basic operations of the Exchange's closing procedures. Rather, the proposed rule change would provide more time for order entry and cancellation leading into the close.

The Exchange's proposal to amend Rules 11.23(a)(11) and (12) to provide that a limit price will not be adjusted to a less aggressive price, rather than never be adjusted to a less aggressive price will clarify how the System handles LLOC and LLOO orders in conjunction with other applicable Exchange Rules. As noted above, in certain instances, such as when a short sale LLOC or LLOO order is entered during a SSCB, the System may re-price the order pursuant to Exchange Rules 11.9(g)(5) and (6). Therefore, the Exchange believes that amending Rules 11.23(a)(11) and (12) to provide that the limit price will not update to a less aggressive price, unless otherwise provided by Exchange Rules, will increase transparency around the operation of the Exchange to the benefit of all market participants. Therefore, the proposed change is intended only to clarify the Exchange Rules.

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 intermarket or intramarket competition not necessary or appropriate in furtherance of the

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<sup>18</sup> See Arca Rule 7.35-E(d)(2).

purposes of the Act. Rather, the Exchange believes that the proposed rule change is evidence of the competitive forces in the equities markets. The Exchange currently uses a 3:55 p.m. Closing Auction Cutoff, which results in a five-minute period where participants in the Closing Auction no longer have the ability to enter additional MOC/LOC Orders, and have limited ability to interact with their already entered orders. Other exchanges, such as Arca, have adopted a shorter cutoff period.<sup>19</sup> The Exchange believes that the market participants that trade in the Exchange's Closing Auction would similarly benefit from a later Closing Auction Cutoff. The proposed cutoff time would apply equally to all market participants, and reflects the current market environment where trading is increasingly more automated and efficient, and where competing exchanges already offer a later cutoff time than those currently in place on the Exchange.

The Exchange believes the change to the definition of LLOC and LLOO as provided in Exchange Rules 11.23(a)(11) and (12) will have no impact on competition, as it is intended to clarify that such orders will not update to a less aggressive price unless otherwise provided by Exchange Rules.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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Id.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-023 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-2021-023. 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, D.C. 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-2021-023 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.<sup>20</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>20</sup> 17 CFR 200.30-3(a)(12).