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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-96954; File No. SR-CboeBZX-2023-011]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

February 21, 2023.

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 February 14, 2023, 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") proposes to amend its 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 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.

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 to: (i) add a Tape A Incentive Tier, (ii) modify Add/Remove Volume Tier 1, (iii) eliminate fee code ZA and replace it with new fee codes ZV, ZB, and ZY, and (iv) add the new fees code ZV, ZB and ZY to Lead Market Markers ("LMMs") Add Tiers 2, 3, and 4, respectively.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants, including issuers of securities, LMMs, and other liquidity providers, 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 15% 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 rebates to members that add 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. The Exchange proposes to amend its Fee Schedule, as described below.

Tape A Incentive Tier

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3 The Exchange initially filed the proposed fee changes on February 1, 2023 (SR-CboeBZX-2023-005). On February 7, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-009. On February 14, 2023, the Exchange withdrew that filing and submitting this proposal.

4 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 27, 2023), available at https://markets.cboe.com/us/equities/market_statistics/.

For order in securities priced at or above $1.00, the Exchange currently provides a standard rebate of $0.00160 per share for displayed orders that add liquidity in Tape A securities, which yield fee code V[5]. The Exchange proposes to amend footnote 12 of the Fee Schedule to adopt a Tape A Incentive Tier, which would be available for qualifying orders that yield fee code V. Particularly, under the proposed Tape A Incentive Tier, Members may receive an additional $0.0002 per share rebate where they have a: Step-Up ADAV[6] from January 2023 greater than or equal to 5,000,000; a Tape A ADAV greater than or equal to 0.30% of the Tape A TCV[7]; and an ADV[8] greater than or equal to 0.50% of the TCV. The proposed changes are designed to encourage Members to increase their displayed liquidity in Tape A securities on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Add/Remove Volume Tier 1

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six displayed add volume tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B[9], V,

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5 Orders yielding Fee Code "V" are displayed orders adding liquidity to BZX (Tape A).

6 "Step-Up ADAV" means ADAV in the relevant baseline month subtracted from current ADAV. ADAV means average daily added volume calculated as the numbers of share added per day and is calculated on a monthly basis.

7 "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.

8 "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

9 Orders yielding Fee Code "B" are displayed orders adding liquidity to BZX (Tape B). For order in securities priced at or above $1.00, orders yielding Fee Code B will receive a standard rebate of $0.00160 per share.

or Y[10], where a Member reaches certain add volume-based criteria. Currently Tier 1 is as follows:

- Tier 1 provides a rebate of $0.0020 per share to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.15%, or the Member has an ADAV equal to or greater than 15,000,000.

The Exchange proposes to amend the criteria of Tier 1. Specifically, the Exchange proposes to amend Tier 1 as follows:

- Proposed Tier 1 will provide a rebate of $0.0020 per share to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.05%, or the Member has an ADAV equal to or greater than 5,000,000.

<u>Fee Codes ZV, ZB, ZY</u>

Currently, fee code ZA is appended to retail orders that add liquidity and receive a rebate of $0.00320 per share. The Exchange proposes to eliminate fee code ZA and replace it with fee codes ZV, ZB and ZY. Particularly, the Exchange proposes to separate fee code ZA into three separate fee codes, each representing a different Tape for retail orders that add liquidity. The Exchange proposes to adopt fee code ZV for Tape A retail orders that add liquidity; fee code ZB for Tape B retail orders that add liquidity; and fee code ZY for Tape C retail orders that add liquidity. Retail orders appended with ZV, ZB, and ZY will continue to receive a rebate of $0.00320 per share. The Exchange notes that it currently maintains separate fee codes based on Tapes for other types of orders as well.[11]

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10 Orders yielding Fee Code "Y" are displayed orders adding liquidity to BZX (Tape C). For order in securities priced at or above $1.00, orders yielding Fee Code C will receive a standard rebate of $0.00160 per share.

11 See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Fee Codes HV, HB, and HY which fee codes represent non-displayed orders that add liquidity to BZX for Tapes A, B, and C respectively.

Finally, the Exchange proposes to include orders yielding fee codes ZV, ZB, and ZY as part of its LMM Program. Under the Exchange's LMM Program, the Exchange offers daily incentives for LMMs in securities listed on the Exchange for which the LMM meets certain Minimum Performance Standards.[12] Such daily incentives are determined based on the number of Cboe-listed securities for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally, the more LMM Securities[13] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those securities, the greater the total daily payment to the LMM. Currently, the Exchange offers four LMM Add Volume Tiers under footnote 14(D) of the Fee Schedule, which provides an additional rebate for applicable LMM orders. The Exchange proposes to update applicable fee codes for LMM Add Volume Tiers 2, 3, and 4, to include new fee codes ZV, ZB, and ZY, respectively. Specifically, the Exchange proposes to: amend LMM Add Volume Tier 2 (which provides an enhanced rebate for adding displayed liquidity in Tape A securities) to apply to orders yielding fee code ZV (in addition to fee codes V and HV[14]); amend LMM Add Volume Tier 3 (which provides and enhanced rebate for adding displayed liquidity in Tape B securities) to apply to orders yielding fee code ZB (in addition to fee codes B and HB[15]); and for LMM Add

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12 As defined in Rule 11.8(e)(1)(E), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

13 As defined in Rule 11.8(e)(1)(D), the term "LMM Security" means a Listed Security that has an LMM. As defined in Rule 11.8(e)(1)(B), the term "Listed Security" means any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.

14 Orders yielding Fee Code "HV" are non-displayed orders adding liquidity to BZX (Tape A).

15 Orders yielding Fee Code "HB" are non-displayed orders adding liquidity to BZX (Tape B).

Volume Tier 4 (which provides and enhanced rebate for adding displayed liquidity in Tape C securities) to apply to orders yielding fee code ZY (in addition to fee codes Y and HY[16]).

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.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[18] 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 is consistent with the Section 6(b)(5)[19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[20] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members 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

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16 Orders yielding Fee Code "HY" are non-displayed orders adding liquidity to BZX (Tape C).

17 15 U.S.C. 78f(b).

18 15 U.S.C. 78f(b)(5).

19 Id.

20 15 U.S.C. 78f(b)(4).

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.

The Exchange believes the proposed addition of the Tape A Incentive Tier, as well as the proposed modifications to Add/Remove Volume Tier 1, are reasonable, fair and equitable, and not unfairly discriminatory because the tiers provide additional opportunities for all Members to meet the tier criteria and receive the corresponding enhanced rebate for each tier if such criteria is met. Furthermore, the Exchange believes that the proposed new Tape A Incentive Tier and modified Add/Remove Volume Tier 1 are reasonable as they serve to incentivize Members to increase their liquidity adding, displayed volume, which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities. The Exchange notes that it is adding a new incentive tier applicable to Tape A securities but not other securities because it already has Tape B Incentive (and Quoting)

Tiers to similarly incentive liquidity in Tape B securities. The Exchange has no obligation to have incentive tiers for any securities, and the Exchange believes other rebate programs currently and as proposed to be offered for adding liquidity to Tape C securities provides sufficient incentive to add liquidity in those securities. Particularly, the proposed incentives to provide displayed liquidity are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity. 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.

In addition to this, the Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for the Add/Remove Volume Tier 1, as amended, as well as for the new Tape A Incentive Tier, and would receive the proposed rebate if such criteria is met. The Exchange notes the proposed criteria for Add/Remove Volume Tier 1 is less stringent than the current criteria, and thus will be easier for Members to meet.

Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, the Exchange anticipates six Members will be able to satisfy the criteria proposed under the new Tape A Incentive Tier and up to eight Members will be able to satisfy the modified criteria proposed under Add/Remove Volume Tier 1. The Exchange also notes that the proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

Finally, the Exchange believes the proposed amendment to eliminate fee code ZA and replace it with new fee codes ZV, ZB and ZY is reasonable, as the Exchange is simply recategorizing retail orders that add liquidity and yield fee code ZA by distinguishing each order based on Tapes. The Exchange notes that it currently maintains separate fee codes based on Tapes for other types of orders as well.[21] Further, the Exchange believe that adding the new fees code ZV, ZB and ZY to LMM Add Tiers 2, 3, and 4, respectively, is reasonable because such fee codes correspond to the criteria for each relevant LMM Add Tier. Specifically, LMM Add Tier 2 relates to orders adding liquidity in Tape A Securities, and proposed fee code ZV applies to retail orders adding liquidity in Tape A Securities; LMM Add Tier 3 relates to orders adding liquidity in Tape B Securities, and proposed fee code ZB applies to retail orders adding liquidity in Tape B Securities; and LMM Add Tier 4 relates to orders adding liquidity in Tape C Securities, and proposed fee code ZY applies to retail orders adding liquidity in Tape C Securities. Finally, the Exchange believes the proposal to recategorize retail orders adding liquidity and adding such fee codes to LMM Add Tiers is also equitable and not unfairly discriminatory because it applies to all Members.

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. Particularly, the proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1 do not impose a burden on intramarket competition that is not in furtherance of the Act in that each tier will be eligible to all Members equally, as all Members have the opportunity to submit orders in an attempt to satisfy the proposed criteria and receive the enhanced rebates associated with each tier. Furthermore, the Exchange believes that the criteria under proposed Tape A Incentive Tier and modified Add/Remove Volume Tier 1 will continue to incentivize Members to submit

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21 Supra note 10.

additional liquidity to the Exchange and to increase their order flow on the Exchange generally, thereby contributing to a deeper and more liquid market. A deeper and more liquid market may promote price discovery and market quality on the Exchange to the benefit of all market participants and enhance the attractiveness of the Exchange as a trading venue, which the Exchange believes, in turn, would continue to encourage market participants to direct additional order flow to the Exchange. Greater liquidity benefits all Members by providing more trading opportunities and encourages Members to send additional orders to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants.

The Exchange believes its proposal to eliminate fee code ZA and separate it into three fee codes (ZV, ZB, and ZY) will have no impact on competition, as it merely is a recategorization of a current fee code under the existing Fee Schedule. Further, the proposal to add such fee codes ZV, ZB, and ZY to LMM Add Tiers 2, 3, and 4, respectively, applies to all Members. Particularly, the proposed changes apply to all Members equally in that all Members continue to be eligible for the LMM Add Volume Tiers (and have the same opportunity to become an LMM Member), have a reasonable opportunity to meet the tiers' criteria and will all receive the corresponding additional rebates if such criteria are met.

The Exchange believes the proposed Tape A Incentive Tier, modified Add/Remove Volume Tier 1, and fee code changes do not impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from pricing currently offered by the Exchange or pricing offered by other equities exchanges. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. 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 other equities exchanges, 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 15% of the market share.[22] 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."[23] 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'…".[24]

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

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22 Supra note 3.

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

24 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)).

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[25] and paragraph (f) of Rule 19b-4[26] 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-2023-011 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-2023-011. 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

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25 15 U.S.C. 78s(b)(3)(A).

26 17 CFR 240.19b-4(f).

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 a.m. and 3 p.m. Copies of such 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-2023-011 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.[27]

Sherry R. Haywood,
Assistant Secretary.

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[27] 17 CFR 200.30-3(a)(12).