



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-97490; File No. SR-CboeBZX-2023-031]

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

May 11, 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 May 1, 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 Options”) 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.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective May 1, 2023.

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 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share and currently the Exchange represents only approximately 5% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fee Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides a rebate of \$0.29 per contract for Market Maker orders that add liquidity in Penny Securities, yielding fee code PM. The Fee Codes and Associated Fees section of the Fees Schedule also provide for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. Additionally, the Fee Schedule offers tiered pricing which provides Members⁴ opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. In response to the

³ See Cboe Global Markets U.S. Options Market Monthly Volume Summary (April 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

⁴ See Exchange Rule 1.5(n).

competitive environment, the Exchange also offers tiered pricing, which provides Members with 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.

The Exchange proposes to update the Market Maker Penny Add Volume Tiers (i.e., applicable to orders yielding fee code PM) set forth in footnote 6 of the Fee Schedule. The Exchange currently provides opportunities for rebates per contract to add liquidity in Penny Securities as follows:

Tier	Rebate Per Contract to Add	Required Criteria
Tier 1	(\$0.31)	Member has an ADAV ⁵ in Market Maker orders $\geq$ 0.15% of average OCV ⁶
Tier 2	(\$0.38)	Member has an ADAV in Market Maker orders $\geq$ 0.25% of average OCV
Tier 3	(\$0.39)	Member has an ADAV in Market Maker orders $\geq$ 0.40% of average OCV
Tier 4	(\$0.40)	(1) Member has an ADAV in Market Maker orders $\geq$ 0.45% of average OCV; and (2) Member has a Step-Up ADRV in Customer orders $\geq$ 0.05% of OCV from December 2022
Tier 5	(\$0.41)	(1) Member has an ADAV in Market Maker orders $\geq$ 0.50% of average OCV; and

⁵ “ADAV” means average daily added volume calculated as the number of contracts added.

⁶ “OCC Customer Volume” or “OCV” means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

		(2) Member has a Step-Up ADAV in Market Maker orders in SPY $\geq 0.05\%$ of average OCV from December 2022
Tier 6	(\$0.43)	Member has an ADAV in Market Maker orders $\geq 0.60\%$ of average OCV
Tier 7	(\$0.44)	(1) Member has an ADAV in Market Maker orders $\geq 0.75\%$ of average OCV; and (2) Member has an ADRV in Customer orders $\geq 0.50\%$ of average OCV

The Exchange proposes to amend these tiers to remove Tiers 4, 5, and 7.⁷ No Members are currently satisfying the criteria under these tiers, and the Exchange no longer wishes to, nor is it required to, maintain the tiers. The Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow. The Exchange also proposes a corresponding non-substantive amendment to update current Tier 6 to Tier 4. The criteria and enhanced rebate offered under this tier remains the same.

Additionally, the Exchange proposes to amend the transaction fee for Customer SPY orders that remove liquidity. Currently, customer orders in all orders, including SPY, that remove liquidity are assessed a standard transaction fee of \$0.48 per contract and yield fee code “PC”. The Exchange now proposes to reduce the fee assessed for Customer SPY orders that remove liquidity to \$0.45 per contract and adopt new fee code “PR” for such orders (and remove SPY orders from fee code “PC”).

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

⁷ The Exchange proposes to eliminate these tiers as described in the table in Footnote 6 and eliminate the amounts of the rebates in the Standard Rates table.

Exchange and, in particular, the requirements of section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)⁹ 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)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,¹¹ 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.

As described above, 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 market participants. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The proposed fee changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow, which the Exchange believes would

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

¹¹ 15 U.S.C. 78f(b)(4).

enhance market quality to the benefit of all Members.

The Exchange believes that it is reasonable and equitable to eliminate Market Maker Penny Add Volume Tiers 4, 5 and 7, because the Exchange is not required to maintain these tiers or provide Members an opportunity to receive reduced fees or enhanced rebates. As stated, no Members are currently satisfying the criteria under these tiers, and the Exchange wishes to consolidate this tiered pricing program and redirect resources and funding into other programs and tiers intended to incentivize increased order flow. Further, Members still have other opportunities to obtain reduced fees via the remaining Market Maker Penny Add Volume Tiers 1 through 4, as amended.

The Exchange believes that eliminating Market Maker Penny Add Volume Tiers 4, 5 and 7 is equitable and not unfairly discriminating because it applies uniformly to all Members, in that, such tiers will not be available for any Member. The Exchange also notes that the proposed change will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Further, the Market Maker Penny Add Volume Tiers 1 through 4, as amended, will continue to apply uniformly to all qualifying Members, in that all Members that submit the requisite order flow per each tier program have the opportunity to compete for and achieve the available tiers.

Additionally, the Exchange believes that the proposed adoption of a new fee code for Customer SPY orders that remove liquidity is consistent with section 6(b)(4) of the Act in that the proposed fee is reasonable, equitable, and not unfairly discriminatory. The Exchange believes its proposed change is reasonable as it is competitive and in line with SPY-specific pricing at other exchanges.¹² The Exchange believes the proposed amendment will also encourage market participants to increase retail SPY order flow to the Exchange, which benefits all market

¹² See e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee of \$0.46 per contract for priority customer SPY orders that remove liquidity. See also Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market-maker SPY orders that add liquidity between \$0.05-\$0.26 per contract.

participants by providing additional trading opportunities. This, in turn, attracts increased large-order flow from liquidity providers which facilitates tighter spreads and potentially triggers a corresponding increase in order flow originating from other market participants. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory as fee code PR applies automatically and uniformly to all Customer SPY orders that remove liquidity.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to adopt SPY-specific pricing as the Exchange already maintains product-specific pricing for other products, such as RUT.¹³ Additionally, as noted above, other exchanges similarly provide for SPY-specific pricing.¹⁴ The Exchange also believes that it is equitable and not unfairly discriminatory to assess a lower fee for Customer SPY orders as compared to other market participants because customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Specifically, customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market-Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, the options industry has a long history of providing preferential pricing to customers, and the Exchange's current Fee Schedule currently does so in many places, as do the fees structures of multiple other exchanges.¹⁵

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

¹³ See BZX Options Exchange Fees Schedule, Fees Codes and Associated Fees.

¹⁴ See e.g., MIAX Pearl Fee Schedule, Section 1 Transaction Rebates/Fees, which provides for a fee range of \$0.42 to \$0.46 per contract for priority customer SPY orders that remove liquidity, based on volume criteria. See also Nasdaq ISE Pricing Schedule, Section 3, Footnote 5, which provides for tiered rebates for market-maker SPY orders that add liquidity between \$0.10-\$0.26 per contract.

¹⁵ See BZX Options Fee Schedule, Fee Codes and Associated Fees. See also Cboe C2 Options Exchange Fees Schedule, Transaction Fees.

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. In particular, 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 proposal to eliminate Market Maker Penny Add Volume Tiers 4, 5 and 7 applies to all Members, in that, such tiers will not be available for any Member. The Exchange does not believe the proposed changes burden competition as all Members will continue to have an opportunity receive enhanced rebates or reduced fees offered under various tiers, including Market Maker Penny Add Volume Tier 1 through 4, as amended, which tiers are generally designed to increase the competitiveness of BZX and attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefit 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.

Furthermore, the proposed change to adopt a new fee code for Customer SPY orders that remove liquidity will also apply to all Members. As discussed above, the Exchange believes the proposed change to adopt a new fee code for Customer SPY orders that remove liquidity would attract additional SPY Customer orders that remove liquidity, 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."

The Exchange also 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 they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% 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 exchanges 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.” 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’”. 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-4¹⁷ 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-2023-031 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-2023-031. 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>).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeBZX-2023-031 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

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-10473 Filed: 5/16/2023 8:45 am; Publication Date: 5/17/2023]

¹⁸ 17 CFR 200.30-3(a)(12).