



SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-98684; File No. SR-CboeBZX-2023-075]

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

October 4, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 29, 2023, Cboe BZX Exchange, Inc. (the “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 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.

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 applicable to its equities trading platform (“BZX Equities”) by 1) discontinuing Step-Up Tier 1; and 2) adopting a new Cross Asset Tier. The Exchange proposes to implement these changes effective October 2, 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 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 Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 14% 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. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁴ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 22, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

⁴ See BZX Equities Fee Schedule, Standard Rates.

liquidity.⁵ 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.

Under footnote 2 of the Fee Schedule, the Exchange currently offers various Step-Up Tiers that provide enhanced rebates for orders yielding fee codes B,⁶ V⁷ and Y⁸ where a Member reaches certain add volume-based criteria, including “growing” its volume over a certain baseline month. The Exchange now proposes to discontinue Step-Up Tier 1 as the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange also proposes to introduce a new Cross Asset Tier under footnote 2, which is designed to incentivize Members to achieve certain levels of participation on both the Exchange’s equities and options platform (“BZX Options”). The proposed criteria is as follows:

- Cross Asset Tier 1 provides a rebate of \$0.0033 per share for securities priced above \$1.00 for qualifying orders (i.e., orders yielding fee codes B, V or Y) where 1) Member has a Step-Up ADAV⁹ from June 2023 \geq 7,000,000; and 2) Member has a Customer ADAV¹⁰ on BZX Options \geq 10,000.

⁵ Id.

⁶ Fee code B is appended to orders that add liquidity to BZX in Tape B securities.

⁷ Fee code V is appended to orders that add liquidity to BZX in Tape A securities.

⁸ Fee code Y is appended to orders that add liquidity to BZX in Tape C securities.

⁹ Step-Up ADAV means ADAV in the relevant baseline month subtracted from current ADAV. ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ Customer ADAV means average daily volume calculated as the number of contracts added for the account of a Priority Customer as defined in BZX Rule 16.1. ADAV is calculated on a monthly basis. See BZX Options Fee Schedule, Definitions.

The proposed Cross Asset Tier is intended to provide an additional manner to incentive Members to add displayed liquidity on the Exchange while also increasing participation on BZX Options. The Exchange believes the addition of the Cross Asset Tier will incentivize Members to grow their volume 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.

Additionally, the Exchange notes that the proposed Cross Asset Tier will expire no later than December 31, 2023, which the Exchange will indicate on the Exchange's fee schedule. Step-Up Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Like other Step-Up Tiers on the Exchange,¹¹ the proposed Cross Asset Tier is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria. Increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.¹² Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹³ 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

¹¹ See BZX Equities Fee Schedule, Footnote 2, Step-Up Tiers.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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)¹⁴ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4)¹⁵ as it is designed to 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 Exchange believes that its proposal to introduce a Cross Asset Tier reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁶ including the Exchange,¹⁷ 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. 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.¹⁸

¹⁴ Id.

¹⁵ 15 U.S.C. 78f(b)(4)

¹⁶ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁷ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁸ See e.g., MIAX Pearl Options Fee Schedule, Transaction Rebates/Fees; The Nasdaq Options Market LLC ("NOM") Pricing Schedule, Options 7, Section 2.

In particular, the Exchange believes its proposal to introduce a Cross Asset Tier is reasonable because the revised tier will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. The Exchange further believes the proposed Cross Asset Tier will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed Cross Asset Tier represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed tier and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. To the extent a Member participates on BZX Equities but not on BZX Options, the Exchange continues to believe that its proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of its options platform. Particularly, the Exchange believes that additional such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, regardless of whether they participate on BZX Options or not. 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 the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy the proposed criteria for the proposed Cross Asset Tier. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates or reduced fees

offered under other tiers. Should a Member not meet the proposed new criteria for the proposed Cross Asset Tier, the Member will merely not receive that corresponding enhanced rebate.

Additionally, the Exchange believes that its proposal to eliminate Step-Up Tier 1 is reasonable because the Exchange is not required to maintain this tier or provide Members an opportunity to receive enhanced rebates. 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 will not be available for any Member). The Exchange also notes that the proposed rule change to remove this tier merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate Step-Up Tier 1 enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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 changes 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 changes further 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 believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed Cross Asset Tier will apply to all Members equally in that all Members are eligible for the tier, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange

does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by adopting pricing incentives in order to 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. Additionally, the Exchange believes that the proposed criteria based on total options volume applicable to BZX Options Priority Customers will provide an additional incentive to those Priority Customers to send additional orders to BZX Options, which in turn provides additional liquidity in the market. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange, as well as its affiliate options exchange, by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The proposed change to discontinue Step-Up Tier 1 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tier will not longer be available to any Member.

Next, the Exchange believes the proposed rule changes 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 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 14% of the market share.¹⁹ 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,

¹⁹ Supra note 3.

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.”²⁰ 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’”²¹ 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 Act²² and paragraph (f) of Rule 19b-4²³ 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,

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²¹ *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)).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-075 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-2023-075. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 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-2023-075 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

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