

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100090; File No. SR-CboeBZX-2024-034)

May 9, 2024

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

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, 2024, 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 Fees 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fees Schedule, effective May 1, 2024.

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 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% 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. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

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

³ See Cboe Global Markets U.S. Options Market Volume Summary by Month (April 19, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

add liquidity in Penny Securities, yielding fee code PM. 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.

The Exchange currently offers six Market Maker Penny Add Volume Tiers (“MM Penny Add Tier”) under Footnote 6 of the Fees Schedule, which provide additional rebates between \$0.31 and \$0.43 per contract for qualifying Market Maker orders (i.e., that yield fee code PM)⁴ where a Member meets certain liquidity thresholds.

Currently, the MM Penny Add Tiers include two Market Maker Cross-Asset Add Tiers, both of which require participation on the Exchange’s equities platform (“BZX Equities”). Under Market Maker Cross-Asset Add Tier 1, the Exchange provides a rebate of \$0.38 per contract where a Member (1) has an ADAV⁵ in Market Maker orders greater than or equal to 0.10% of average OCV⁶; (2) has on BZX Equities an ADAV greater than or equal to 0.40% of average TCV⁷; and (3) is the Lead Market Maker (“LMM”)⁸ on BZX Equities in at least 50 equity symbols. Under Market Maker Cross-Asset Add Tier 2, the Exchange currently provides a rebate

⁴ Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Program Securities and are offered a rebate of \$0.29.

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

⁶ “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.

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 “Lead Market Maker” means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security. *See* Rule 11.8(e).

of \$0.39 per contract where a Member (1) has an ADAV in Market Maker orders greater than or equal to 0.20% of average OCV; (2) has on BZX Equities an ADAV greater than or equal to 0.45% of average TCV; and (3) is the LMM on BZX Equities in at least 50 equity symbols.

The Exchange proposes to delete Market Maker Cross-Asset Add Tier 1 and amend the criteria for Market Maker Cross-Asset Add Tier 2.⁹ No Members are currently satisfying the criteria under Market Maker Cross-Asset Add Tier 1, and the Exchange no longer wishes to, nor is it required to, maintain the tier. As proposed, under the remaining Market Maker Cross-Asset Add Tier, the Exchange will provide a rebate of \$0.39 per contract where a Member (1) has an ADAV in Market Maker orders in SPY, QQQ greater than or equal to 0.20% of average SPY, QQQ_OCV; (2) has on has on [sic] BZX Equities an ADAV greater than or equal to 0.45% of average TCV or an ADAV greater than or equal to 45,000,000,000; and (3) is the LMM on BZX Equities in at least 50 equity symbols.

The Exchange believes the amended tier criteria for the Market Maker Cross-Asset Add Tier, along with the existing MM Penny Add Tiers, continue to provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher rebates for such transactions. Overall, the MM Penny Add Tiers, including the Market Maker Cross-Asset Add Tier, are designed to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

⁹ As part of this proposed rule change, the Exchange proposes to rename “Market Maker Cross-Asset Add Tier 2” to “Market Maker Cross-Asset Add Tier”.

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.¹⁰ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹¹ 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)¹² 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,¹³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders 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

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

¹² Id.

¹³ 15 U.S.C. 78f(b)(4).

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 enhance market quality to the benefit of all Members.

The Exchange believes that it is reasonable to eliminate Market Maker Cross-Asset Add Tier 1 because the Exchange is not required to maintain this tier or provide Members an opportunity to receive enhanced rebates. As stated, no Members are currently satisfying the criteria under these tiers, and the proposed change enables the Exchange to 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 MM Penny Add Tiers.

The Exchange believes that eliminating Market Maker Cross-Asset Add Tier 1 is equitable and not unfairly discriminatory because it applies uniformly to all Members, in that, the tier 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 MM Penny Add Tiers 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 the amended criteria for the remaining Market Maker Cross-Asset Add Tier is reasonable, as such changes are designed to encourage Members to increase their liquidity on the Exchange and also their participation on BZX Equities to

continue to achieve the rebate offered under the Market Maker Cross-Asset Add Tier. Specifically, the Exchange believes the amended criteria reasonably encourages Members to increase their ADAV in Market Makers orders in SPY and QQQ over a modestly higher percentage of average SPY, QQQ OCV, and to increase their ADAV on BZX Equities. The Exchange notes that increased Market Maker activity (including LMMs), particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increases in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors across both the Exchange's options and equities platforms by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers. Additionally, a number of Market Makers have a reasonable opportunity to satisfy the criteria of the Cross-Asset Add Tier, as amended. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the Cross-Asset Add Tier, as amended, the Exchange anticipates that approximately one Market Maker will be able to compete for and achieve the proposed criteria of the amended tier; however, the tier is open to any Market Maker that satisfies the tier's amended criteria. The Exchange believes the tier, as amended, could provide an incentive for other Members to submit additional liquidity on BZX Options and Equities to qualify for the enhanced rebate. To the extent a Member participates on the Exchange but not on BZX Equities, the Exchange does believe that the

proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Equities. Particularly, the Exchange believes 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, whether they participate on BZX Equities or not. The proposed change is also fair and equitable in that membership in BZX Equities is available to all market participants, which would provide them with access to the benefits on BZX Equities provided by the proposed change, even where a member of BZX Equities is not necessarily eligible for the enhanced rebate on the Exchange.

The Exchange also notes that it does not believe the proposed changes will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the enhanced rebate, and has alternative choices to aim to achieve under the MM Penny Add Tiers. Furthermore, the enhanced rebate would apply to all Members that meet the proposed required criteria under tier.

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. The Exchange does not believe the proposed changes to the MM Penny Add Tiers will impose any burden on intramarket competition. Particularly, the proposed change applies uniformly to all Market Makers. The proposal to eliminate Market Maker Cross-Asset Add Tier 1 applies to all Members, in that, such tier will not be available for any Member. All Members will continue to have an opportunity receive enhanced rebates or reduced fees offered under various tiers, including the remaining Market Maker Cross-Asset Add Tier, as amended. Additionally, the proposal to amend the remaining Market Maker Cross-Asset Tier will apply to all Members and

all Members will continue to have an opportunity to receive the corresponding rebate through the program.

All MM Penny Add Tiers are generally designed to increase the competitiveness of BZX and incentivize participants to increase their order flow on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. An overall increase in add activity may provide for deeper, more liquid markets and execution opportunities at improved prices. Furthermore, 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.

As discussed above, to the extent a Member participates on the Exchange but not on BZX Equities, the Exchange notes that the proposed change can provide an overall benefit to the Exchange resulting from the success of BZX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all market participants.

Additionally, the proposed change is designed to attract additional order flow to the Exchange and BZX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant. 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.”¹⁴

The Exchange does not believe that the proposed rule changes will 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 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of option 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.”¹⁶ 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

¹⁴ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

¹⁵ See supra note 3.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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’....’¹⁷ 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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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.

¹⁷ 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)).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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-2024-034 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-2024-034. 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-2024-034 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.²⁰

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).