

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88354; File No. SR-CboeBZX-2020-020)

March 10, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend its Fee 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 March 2, 2020, 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (BZX Options), effective March 2, 2020.

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 21% of the market share and currently the Exchange represents only 10% 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 Fees Schedule sets forth standard rebates and rates applied per contract.

³ See Cboe Global Markets U.S. Options Market Volume Summary (February 20, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

For example, the Exchange provides standard rebates ranging from \$0.25 up to \$1.05 per contract for orders that add liquidity in both Penny and Non-Penny Securities. 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.⁴ The Exchange proposes to amend its fee schedule to specify in new footnote 5 that when orders are submitted with a “Designated Give Up”, as defined below, the applicable rebates (i.e., any standard rebate or applicable tier rebates) for such orders when executed on the Exchange (yielding fee code NA, NF, NN, NY,⁵ PA, PF, PN or PY)⁶ are provided to the Member who routed the order to the Exchange.

The Exchange recently amended Rule 21.12 (Clearing Member Give Up) to expand upon the procedure related to the “give up” of a Clearing Member⁷ by Users⁸ on the Exchange.⁹

⁴ For example, the Exchange currently offers eight Customer Penny Pilot Add Tiers under footnote 1, which provide an enhanced rebates between \$0.35 and \$0.53 per contract for qualifying Customer orders which meet certain add liquidity thresholds and yield fee code PY.

⁵ Fee codes NA, NF, NN and NY are appended to liquidity adding orders in Non-Penny Pilot securities that are Professional, Firm/Broker Dealer/Joint Back Office, Away Market-Maker and Customer orders, respectively.

⁶ Fee codes PA, PF, PN and PY are appended to liquidity adding orders in Penny Pilot Securities that are Professional, Firm/Broker Dealer/Joint Back office, Away Market-Maker and Customer orders, respectively.

⁷ A Clearing Member is defined as “Options Member that is self-clearing or an Options Member that clears BZX Options Transactions for other Members of BZX Options.” See Exchange Rule 16.1. An Option Member is defined as “a firm, or organization that is registered with the Exchange pursuant to Chapter XVII of these Rules for purposes of participating in options trading on EDGX Options as an ‘Options Order Entry Firm’ or ‘Options Market Maker.’” See Exchange Rule 16.1(a)(38) [sic].

⁸ See Exchange Rule 1.5(cc).

⁹ See Securities Exchange Act Release No. 87985 (January 16, 2020) 85 FR 4007 (January 23, 2020) (SR-CboeBZX-2020-002).

Effective March 2, 2020, Rule 21.12 will provide that, in addition to its own Clearing Member (or itself, if the firm is self-clearing), a User may identify to the Exchange a Designated Give Up, as that term is defined in the Rule. Specifically, amended Rule 21.12(b)(1) defines the term Designated Give Up as any Clearing Member that a User (other than a Market Maker)¹⁰ identifies to the Exchange, in writing, as a Clearing Member the User requests the ability to give up. With this change, a Member acting as an options routing firm on behalf of one or more other Exchange Members (a “Routing Firm”) is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm’s own clearing firm) who will accept and clear any resulting transaction. Because the Routing Firm is responsible for the decision to route the order to the Exchange, the Exchange believes that such Member should be provided the rebate when orders that yield fee code PY, PA, PF, PN, NY, NA, NF, or NN are executed. In connection with this change, the Exchange proposes to append new footnote 5 to fee codes PY, PA, PF, PN, NY, NA, NF, or NN in the Fee Codes and Associated Fees table of the fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹¹ Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,¹² in that it provides for the equitable allocation of reasonable dues, fees and other charges among

¹⁰ See Exchange Rule 1.5(l).

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

members and other persons using any facility or system which the Exchange operates or controls.

The Exchange notes that the U.S. options markets are highly competitive, and the proposed fee structure is intended to provide an incentive for Members to direct orders to the Exchange. The proposal would only apply to fee codes PY, PA, PF, PN, NY, NA, NF, and NN, related to liquidity adding orders, because these are the primary rebates in place on the Exchange and reflect the primary liquidity that the Exchange is seeking to attract from Routing Firms that are now able to identify Designated Give Ups.¹³ The Exchange believes that the proposed amendments to its fee schedule will enhance the Exchange's competitive position and will result in increased liquidity on the Exchange, to the benefit of all Exchange participants. Therefore, the Exchange believes that providing rebates is equitable and reasonable and not unfairly discriminatory as it would allow the Exchange, in the context of the new give up procedure described above, to provide a rebate directly to the party making the routing decision to direct certain orders to the Exchange (i.e., the Routing Firm), which is consistent with both the Exchange's historic practice and the purpose behind a rebate (i.e., to incentivize the order being directed to the Exchange). The Exchange lastly notes that the proposed change is similar to a provision previously adopted by the Exchange's affiliate, Cboe EDGX Exchange, Inc.¹⁴

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

The Exchange believes its proposed amendments to its fee schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant

¹³ The Exchange notes that Market-Makers may only give up its respective Guarantor, as defined by Rule 21.12(b)(2). See Cboe BZX Options Rule 21.12(b)(5).

¹⁴ See Cboe EDGX Options Exchange Fee Schedule, Footnote 5.

departure from previous pricing offered by the Exchange or its competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes that its proposal to incentivize Routing Firms that are utilizing the new give up procedure to direct orders to the Exchange, and will enhance the Exchange's competitive position by resulting in increased liquidity on the Exchange, thereby providing more of an opportunity for customers to receive best executions.

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 Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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:

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2020-020 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-2020-020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, 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. 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-2020-020 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.¹⁷

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).