SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93308; File No. SR-CboeBZX-2021-067)

October 13, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change 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 September 30, 2021, 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" or "BZX Equities") 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

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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 Fee Schedule by (1) modifying Tier 2 of the Step-Up Tiers as provided under footnote 2 of the Fee Schedule; and (2) eliminating two existing tiers and introducing a new tier of the Single Market Participant Identifier ("MPID") Investor Tiers, as provided under footnote 4 of the Fee Schedule, effective October 1, 2021.

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 Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 17% 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 credits 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,

3 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (September 27, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0018 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. 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.

Step-Up Tiers

The Step-Up Tiers set forth in footnote 2 of the Fee Schedule provides Members an opportunity to qualify for an enhanced rebate for liquidity adding orders that yield fee codes B, V and Y[4] where they increase their relative liquidity each month over a predetermined baseline. Tier 2 of the Step-Up Tiers provides an enhanced rebate of $0.0032 per share to a Member that has a Step-Up Add TCV[5] from April 2020 equal to or greater than 0.30%. The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange. Now the Exchange proposes to replace the current criteria for Step-Up Tier 2, with the following:

- Member has a Step-Up ADAV[6] from June 2021 equal to or greater than 10,000,000; and

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4 Fee code B is appended to displayed orders adding liquidity to BZX (Tape B), fee code V is appended to displayed orders adding liquidity to BZX (Tape A), and fee code V [sic] is appended to displayed orders adding liquidity to BZX (Tape C). Each is provided a rebate of $ 0.00180.

5 "Step-Up Add TCV" means ADAV as a percentage of TCV in the relevant baseline month subtracted from current ADAV as a percentage of TCV.

6 "Step-Up ADAV" means ADAV (as defined below) in the relevant baseline month

- Member has an ADV[7] equal to or greater than 0.30% of the TCV[8] or Member has an ADV equal to or greater than 35,000,000.

The Exchange believes that the tier as proposed will further incentivize increased order flow to the Exchange, which may contribute to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Step-Up Tier 2, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate.

Single MPID Investor Tiers

Pursuant to footnote 4 of the Fee Schedule, the Exchange currently offers three [sic] Single MPID Investor Tiers that provide Members an opportunity to receive incrementally greater enhanced rebates from the standard rebate for liquidity adding orders that yield fee codes B, V and Y where Members (by MPID) meet certain incrementally more difficult volume-based criteria. For example, Single MPID Investor Tier 1 currently provides an enhanced rebate of $0.0030 per share for qualifying orders (i.e., yield fee code B, V and Y) where 1) an MPID has an Step-Up ADV[9] from May 2021 equal to or greater than 0.10% TCV or the MPID has a Step-Up ADV from May 2021 equal to or greater than 8,000,000; and 2) an MPID adds a Step-Up ADAV from May 2021 equal to or greater than 0.05% of TCV. The Exchange proposes to

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subtracted from current ADAV.

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

8 "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.

9 "Step-Up ADV" means ADV in the relevant baseline month subtracted from current day ADV.

eliminate existing Tiers 2 and 3 of the Single MPID Investor Tiers, and rename existing Tier 4 to Tier 2. The Exchange notes that no Member has reached Tiers 2 or 3 in several months, and the Exchange no longer wishes to, nor is it required to, maintain such tiers.

The Exchange also proposes to adopt new Tier 3 of the Single MPID Investor Tiers. New Tier 3 provides a proposed enhanced rebate $0.0034 for a Member's qualifying orders where an MPID has a Step-Up ADAV as a percentage of TCV equal to or greater than 0.20% from September 2021 or the MPID has a Step-Up ADAV from September 2021 equal to or greater than 20,000,000. Members that achieve the proposed Single MPID Investor Tier 3 must therefore increase the amount of liquidity added on BZX over a baseline amount, thereby contributing to a deeper and more liquid market. Incentivizing an increase in liquidity adding volume through additional criteria and enhanced rebate opportunities, encourages liquidity adding Members on the Exchange to contribute to a deeper, more liquid market, and to increase transactions opportunities provided by such increased liquidity, together providing for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange

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10 15 U.S.C. 78f.

11 15 U.S.C. 78f(b)(4) and (5).

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 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 believes the proposed changes to the Step-Up Tier 2 are reasonable because the tier, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate. The Exchange next 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 discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The Exchange also believes that the current enhanced rebates under the Step-Up Tier 2 continues to be commensurate with the proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the criteria as amended. The Exchange believes the proposed changes to the Step-Up Tier 2 represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the Step-Up Tier 2 and would have the opportunity to meet the tier's criteria and would receive the current rebate if such criteria is met. 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 for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least three Member will be able to satisfy the criteria proposed under the new tier.[12] The Exchange also notes that proposed tier/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes the proposed amendment to remove the Single MPID Investor Tiers 2 and 3 is reasonable because no Member has achieved these tiers in several months. Furthermore, the Exchange is not required to maintain these tiers and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates, including the proposed Single MPID Investor Tier 3. The Exchange believes the proposal to eliminate the Single MPID Investor Tiers 2 and 3 is also equitable and not unfairly discriminatory because it applies to all Members.

The Exchange also believes proposed Single MPID Investor Tier 3 is a reasonable means to encourage Members to increase their added liquidity on the Exchange each month over a predetermined baseline by offering Members an additional opportunity to meet criteria to receive an enhanced rebate. More specifically, the Exchange notes that greater add volume order flow may provide for deeper, more liquid markets and execution opportunities at improved prices, which the Exchange believes incentivizes liquidity providers to submit additional liquidity opportunities. 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.

Further, the Exchange believes that the proposed Single MPID Investor Tier 3 is reasonable as it does not represent a significant departure from the criteria or corresponding

12 The Exchange notes that no Members have met Step-Up Tier 2 in recent months.

enhanced rebates currently offered in the Fee Schedule, including other Single MPID Investor Tiers, and that the proposed enhanced rebate is commensurate with the new criteria. Particularly, the proposed rebate is reasonably based on the difficulty of satisfying the tier's proposed criteria as compared to the existing Single MPID Investor Tiers, which provide lower rebates for less stringent criteria. Indeed, the proposed criteria in new Tier 3 includes higher growth thresholds that Members can achieve than other Single MPID Investor Tiers and, as a result, a higher enhanced rebate of $0.0034, as proposed, than the enhanced rebates offered in the other Single MPID Investor Tiers.

The Exchange also believes that the proposed Single MPID Investor Tier 3 represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members are eligible for the new Single MPID Investor Tier 3 and have the opportunity to meet the tier's criteria and receive the applicable enhanced rebate if such criteria is met. 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 for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under the new tier. The Exchange also notes that the proposed tier will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebate offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive the corresponding proposed enhanced rebate.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 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 rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition 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 Securities and Exchange Commission's (the "Commission's" or the "SEC'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 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 amended Step-Up Tier 2 and proposed Single MPID Investor Tier 3 apply to all Members equally in that all Members are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by adopting an additional pricing incentive 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. Greater overall order flow, trading opportunities, and pricing transparency benefits 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.

Next, the Exchange 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. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. 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 17% of the market share.[13] 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."[14] 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

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13 See supra note 3.

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

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'….".[15] Accordingly, the Exchange does not believe its proposed fee changes 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 Act[16] and paragraph (f) of Rule 19b-4[17] 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.

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15 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)).

16 15 U.S.C. 78s(b)(3)(A).

17 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 (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-067 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-2021-067. 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-2021-067, 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]

J. Matthew DeLesDernier
Assistant Secretary

18 17 CFR 200.30-3(a)(12).