

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93616; File No. SR-CboeBZX-2021-073)

November 19, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend How the BZX Official Closing Price is Determined for a BZX-Listed Security That is Not a Corporate Security, Pursuant to Rule 11.23(c)(2)(B)(ii)(b)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 9, 2021, 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 and II below, which Items have been prepared by the self-regulatory organization. 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 how the BZX Official Closing Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b). 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/](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.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BZX Rule 11.23, Auctions, to modify how the BZX Official Closing Price,<sup>3</sup> which is the price disseminated to the consolidated tape as the market center closing trade, would be determined for any BZX-listed security that is not a corporate security (i.e., an Exchange-Traded Product (“ETP”) as provided in Exchange Rule 14.11, also referred to as a “Derivative Securities Product”), as set forth in Rule 11.23(c)(2)(B)(ii)(b). The proposal is substantively identical to the process described in Nasdaq Stock Market LLC (“Nasdaq”) Rule 4754(b)(4)(A)(ii)<sup>4</sup> and substantially similar to the process described in NYSE Arca, Inc. (“Arca”) Rule 1.11(l) [sic].<sup>5</sup> Further, this provision of Rule 11.23(c)(2)(B)(ii)(b) is only used to determine the BZX Official Closing Price and does not impact any executions in the Closing Auction. Such provision also only applies where there is less than one round lot executed in the

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<sup>3</sup> See Exchange Rule 11.23(a)(3).

<sup>4</sup> Infra note 12 and accompanying text.

<sup>5</sup> Infra note 13 and accompanying text.

Closing Auction and where there has not been a trade that would qualify as a Final Last Sale Eligible Trade within the final five minutes before the end of Regular Trading Hours.

Rule 11.23(c)(2)(B)(i) through (iii) sets forth how the BZX Official Closing Price for Derivative Securities Products is determined. Paragraph (B)(i) provides that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price. Paragraph (B)(ii) provides that in the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i), the BZX Official Closing Price for such security will depend on when the last consolidated last-sale trade occurs. Specifically, if a trade that would qualify as a Final Last Sale Eligible Trade<sup>6</sup> occurred (a) within the final five minutes before the end of Regular Trading Hours,<sup>7</sup> the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price (“TWAP”) of the National Best Bid or Offer<sup>8</sup> (“NBBO”) midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing Price. Paragraph (B)(iii) provides that if the BZX Official Closing Price cannot be determined under paragraphs (B)(i) or (B)(ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

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<sup>6</sup> The term “Final Last Sale Eligible Trade” shall mean the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last round lot trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used. See BZX Rule 11.23(a)(9).

<sup>7</sup> The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BZX Rule 1.5(w).

<sup>8</sup> See BZX Rule 1.5(o).

The Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) in order to change how the BZX Official Closing Price is calculated using the TWAP of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours. Under current functionality, the Exchange uses all NBBO quotes during the last five minutes of Regular Trading Hours to determine the BZX Official Closing Price, which could result in setting a BZX Official Closing Price that is not necessarily reflective of a Derivative Securities Product's reasonable market value. Given this, the Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) to exclude from the TWAP calculation a midpoint that is based on an NBBO that is not reflective of the security's true and current value. As proposed, the Exchange would exclude a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price. The Exchange would also exclude a crossed NBBO from the calculation.<sup>9</sup>

The proposed amendment to adopt an NBBO midpoint check is designed to validate whether an NBBO used in the calculation of the BZX Official Closing Price bears a relation to the value of the value of the Derivative Securities Product. Under the proposal, the Exchange would calculate the midpoint of the NBBO and then multiply the midpoint by ten percent (10%) and compare this value to the spread of the NBBO. If the value of the midpoint when multiplied by ten percent (10%) is less than the spread of that NBBO, the Exchange would exclude the quote from the NBBO midpoint calculation. The Exchange believes that if the NBBO spread is greater than the value of the midpoint when multiplied by ten percent (10%), it would indicate that the spread is too

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<sup>9</sup> As provided in Rule 11.20(a)(2), the term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

wide, and therefore not representative of the value of the security. For example: If the NBBO is \$19.99 x \$20.01, and thus the NBBO midpoint is \$20, validation logic would allow a maximum quote width up to \$2 to be used as part of the calculation ( $\$20.00 * 10\% = \$2$ ). If the NBBO was \$17.00 x \$23.00, and thus the NBBO midpoint is \$20.00, the quote would not be used in the midpoint calculation because it violates the maximum quote width ( $\$20.00 * 10\% = \$2$ ). If there are no eligible quotes to determine a TWAP within the time period or if the ETP is halted, then Exchange will determine the BZX Official Closing Price as provided under existing Rule 11.23(c)(2)(B)(iii).

The Exchange plans to implement the proposed rule change during the fourth quarter of 2021, and will announce the implementation date via Trade Desk Notice.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is 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 facilitating transactions in securities, and 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.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide for a BZX Official Closing Price that is more reflective of the current market

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

value of an ETP on that trading day. Further, it will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide for a more robust mechanism to determine the value of an ETP for purposes of determining the BZX Official Closing Price.

The proposed functionality is substantively identical to functionality that has already been approved by the Commission and is operational on another Exchange. Specifically, Nasdaq Rule 4754(b)(4)(A)(ii) provides that where a time-weighted average midpoint (“T-WAM”) calculation is reflected as the Nasdaq official closing price, the T-WAM calculation will only use an “eligible quote”, which is defined as a quote whose spread is no greater than a value of 10% of the midpoint price, and will exclude crossed NBBO markets.<sup>12</sup> The proposal is also substantially similar to Arca Rule 1.1(II)(1)(B) except the Exchange proposes to exclude a quote when the spread is greater than a value of 10% of the midpoint price and Arca Rule 1.1(II)(1)(B) excludes a midpoint. Specifically, Arca Rule 1.1(II)(1)(B) provides that for the purpose of deriving the official closing price using a TWAP calculation, Arca will exclude 1) an NBBO midpoint from the calculation if that midpoint, when multiplied by 10%, is less than the spread of that NBBO, and 2) a crossed NBBO.<sup>13</sup> Therefore, the Exchange’s proposal to exclude from

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<sup>12</sup> See Nasdaq Rule Nasdaq Rule 4754(b)(4)(A)(ii). See also Securities and Exchange Act No. 87486 (November 7, 2019) 84 FR 61952 (November 14, 2019) (SR-NASDAQ-2019-061) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products).

<sup>13</sup> See Arca Rule 1.1(II)(1)(B). See also Securities Exchange Act No. 84471 (October 23, 2018) 83 FR 54384 (October 29, 2018) (SR-NYSEArca-2018-63) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 1.1(II) To Modify the Formula for Establishing the Official Closing Price for a Derivative Securities Product When There Is No Closing Auction or if the Closing Auction Is Less Than One Round Lot, by Excluding the NBBO Midpoint if the Midpoint Multiplied by 10% Is Less Than the NBBO Spread or if the NBBO Is Crossed).

the TWAP calculation provided under Rule 11.23(c)(2)(B)(ii)(b) a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price, is substantively identical to existing functionality on Nasdaq and substantially similar to existing functionality on Arca and thus does not present any new or novel issues.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

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 proposed rule change is designed to ensure that the BZX Official Closing Price of BZX-listed Derivative Securities Products is calculated, pursuant to Rule 11.23(c)(2)(B)(ii)(b), at a price that is reasonably reflective of the market value of the security. The Exchange believes the proposed changes would improve the experience of market participants trading on the Exchange without imposing any significant burden on competition as the proposal would simply create a process to validate the NBBO midpoint used to determine the Official Closing Price by comparing the midpoint value to the spread of the NBBO, and if the NBBO midpoint is not within the proposed parameters, to exclude the quote from the calculation. The proposal would ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate basis for determining the Official Closing Price. Further, as the proposal is designed to ensure the BZX Official Closing Price calculated pursuant to Exchange Rule 11.23(c)(2)(B)(ii)(b) accurately reflects the supply and demand in the Derivative Securities Product, the Exchange believes the proposal will help it better compete as a listing venue.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>14</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>17</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposal is substantively identical to Nasdaq Rule 4754(b)(4)(A)(ii) and substantially similar to Arca Rule 1.1(II). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the

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<sup>14</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>15</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

<sup>17</sup> 17 CFR 240.19b-4(f)(6)(iii).



Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>18</sup>

At any time within 60 days of the filing of such 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 shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-073 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-2021-073. This file number should be included on the subject line if e-mail is used. To help the Commission process and

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<sup>18</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2021-073 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.<sup>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12).