SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93829; File No. SR-CboeBZX-2021-084)

December 20, 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 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on December 10, 2021, Cboe BZX Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II 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

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 as follows: (1) modify the Add/Remove Volume Tiers, (2) adopt a new Non-Displayed Add Volume Tier, (3) modify Tier 2 of the Step-Up Tiers, and (4) eliminate the Total Volume Tier. The Exchange proposes to implement the proposed change to its fee schedule on December 1, 2021.[3]

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,[4] no single registered equities exchange has more than 16% 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

3 The Exchange initially filed the proposed fee changes on December 1, 2021 (SR-BZX-2021-081). On December 10, 2021, the Exchange withdrew that filing and submitted this proposal.

4 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (November 24, 2021), available at https://markets.cboe.com/us/equities/market_statistics/.

standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. 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.

Add/Remove Volume Tiers

Pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers Add/Remove Volume Tiers (tiers 1 through 5) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B,[5] V,[6] and Y[7] and meet certain required volume-based criteria. Specifically, the Tiers are as follows:

- Tier 1 offers an enhanced rebate of $0.0025 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV[8] as a percentage of TCV[9] equal to or greater than 0.08% or where a Member has an ADAV equal to or greater than 8 million shares.

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5 Orders yielding Fee Code "B" are displayed orders adding liquidity to BZX (Tape B).

6 Orders yielding Fee Code "V" are displayed orders adding liquidity to BZX (Tape A).

7 Orders yielding Fee Code "Y" are displayed orders adding liquidity to BZX (Tape C).

8 "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.

9 "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.

- Tier 2 offers an enhanced rebate of $0.0027 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.15% or where a Member has an ADAV equal to or greater than 15 million shares.
- Tier 3 offers an enhanced rebate of $0.0029 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.35% or where a Member has an ADAV equal to or greater than 35 million shares.
- Tier 4 offers an enhanced rebate of $0.0030 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.60% or where a Member has an ADAV equal to or greater than 60 million shares.
- Tier 5 offers an enhanced rebate of $0.0031 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 1.00% or where a Member has an ADAV equal to or greater than 100 million shares.

The Exchange now proposes to modify existing Tiers 1 and 2, add a new Tier 2, and renumber existing Tiers 2 through 5. Specifically, as proposed the Tiers would provide for the following:

- Proposed Tier 1 would offer an enhanced rebate of $0.0020 per share (instead of $0.0025 per share) for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.08% [sic] or where a

Member has an ADAV equal to or greater than 10 million shares (instead of 8 million shares).

- Proposed Tier 2 would offer an enhanced rebate of $0.0025 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.20% or where a Member has an ADAV equal to or greater than 20 million shares.
- Proposed Tier 3 (current Tier 2) would offer an enhanced rebate of $0.0027 per share for qualifying orders (i.e., yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV equal to or greater than 0.25% (instead of 0.15%) or where a Member has an ADAV equal to or greater than 25 million shares (instead of 15 million).
- Proposed Tiers 4 through 6 would have the same criteria and provide the same enhanced rebate as existing Tiers 3 through 5, respectively. The only proposed change is to modify the Tier numbers of Tier 3 through 5 to Tier 4 through 6, respectively.

Although the proposed changes to the thresholds of proposed Tiers 1 and 3 result in more stringent criteria, Members still have an opportunity to receive an enhanced rebate if they meet the applicable tier threshold. Moreover, the proposed changes are designed to encourage Members to increase their displayed liquidity in Tape A, B and C securities 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.

Non-Displayed Add Volume Tiers

Pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers Non-Displayed Add Volume Tiers (tiers 1 through 4) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes HB,[10] HV,[11] and HY[12] and meet certain required volume-based criteria. Specifically, the Add Volume Tiers are as follows:

- Non-Displayed Add Volume Tier 1 offers an enhanced rebate of $0.0018 per share for qualifying orders (i.e., yielding fee codes HB, HI,[13] HV, or HY) where a Member adds an ADV equal to or greater than 0.05% of the TCV.
- Non-Displayed Add Volume Tier 2 offers an enhanced rebate of $0.0020 per share for qualifying orders (i.e., yielding fee codes HB, HI, HV, or HY) where a Member adds an ADV equal to or greater than 0.10% of the TCV.
- Non-Displayed Add Volume Tier 3 offers an enhanced rebate of $0.0025 per share for qualifying orders (i.e., yielding fee codes HB, HI, HV, or HY) where a Member adds an ADV equal to or greater than 0.15% of the TCV.
- Non-Displayed Add Volume Tier 4 offers an enhanced rebate of $0.0029 per share for qualifying orders (i.e., yielding fee codes HB, HI, HV, or HY) where a Member adds an ADV equal to or greater than 0.35% of the TCV.

Now, the Exchange proposes to introduce a new Non-Displayed Add Volume

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[10] Orders yielding Fee Code "HB" are non-displayed orders adding liquidity to BZX (Tape B).

[11] Orders yielding Fee Code "HV" are non-displayed orders adding liquidity to BZX (Tape A).

[12] Orders yielding Fee Code "HY" are non-displayed orders adding liquidity to BZX (Tape C).

[13] Orders yielding Fee Code "HI" are non-displayed orders adding liquidity to BZX that receive price improvement.

Tier 4 and renumber existing Non-Displayed Add Volume Tier 4 to Tier 5. Specifically, proposed Non-Displayed Add Volume Tier 4 is as follows:

- Proposed Non-Displayed Add Volume Tier 4 offers an enhanced rebate of $0.00275 per share for qualifying orders (i.e., yielding fee codes HB, HI, HV, or HY) where a Member adds an ADV equal to or greater than 0.20% of the TCV.

The proposed change is designed to give Members an additional opportunity to receive an enhanced rebate for orders meeting the applicable threshold. Further, the proposed change is designed to encourage Members to increase their non-displayed volume adding liquidity on the Exchange, contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Step-Up Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange currently offers Step-Up Tiers (tiers 1 and 2) that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B, V, and Y 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 (1) has a Step-Up Add TCV[14] from June 2021 equal to or greater than 10 million shares; and (2) has an ADV equal to or greater than 0.30% of the TCV or the Member has an ADV equal to or greater than 35 million. 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

[14] "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.

amend criteria (1) of the current criteria for Step-Up Tier 2 to provide an alternative means of satisfying the first prong. Particularly, the Exchange proposes to provide under criteria (1) that a Member must have a Step-Up ADAV from June 2021 equal to or greater than 10 million shares or, alternatively, a Member must have a Step-Up Add TCV from June 2021 equal to or greater than 0.10%. 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 would provide Members an opportunity to receive an enhanced rebate.

Total Volume Tiers

The Exchange also proposes to eliminate the Total Volume Tier 1, which is the only Tier under Total Volume Tiers and is currently described under footnote 3 of the fee schedule. Particularly, this tier applies to orders yielding fee code B, V, or Y and provides a $0.0033 per share rebate to Members that have an ADV greater than or equal to 1.40% of the TCV. No Member has reached this tier in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such a tier.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[15] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[16] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4) and (5).

other persons using its facilities. 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 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, and thus is in the public interest. The Exchange 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 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. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several 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 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. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and/or fees and rebates.

The Exchange believes the proposed changes to the Add/Remove Volume Tiers, Non-Displayed Add Volume Tiers, and Step-Up Tiers are reasonable because each tier, as modified, continues to be available to all Members and provide Members an opportunity to receive an enhanced rebate. The Exchange also believes that the proposed enhanced rebates continue to be commensurate with the proposed criteria. That is, the rebates reasonably reflect the difficulty in achieving the applicable criteria as amended. The Exchange believes the proposed changes to the Add/Remove Volume Tiers, Non-Displayed Add Volume Tiers, and Step-Up Tiers represent an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed 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 tiers will impact Member activity, the Exchange anticipates that at least five Members will be able to satisfy the criteria proposed under the Add/Remove Volume Tier 1, one Member will be able to satisfy the criteria proposed under the Add/Remove Volume Tier 3, one Member will be able to satisfy the criteria proposed under the Non-Displayed Tier 4, and one Member will be able to satisfy the criteria proposed under the Step-Up Tier 2. The Exchange does not expect any Member to immediately satisfy the criteria proposed under the Add Volume Tier 2; however, the Exchange believes the proposed rebate incentivizes Members to meet the tier's criteria in the future. 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.

Finally, the Exchange believes the proposed amendment to remove the Total Volume Tier is reasonable because no Member has achieved this tier in several months. Moreover, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed liquidity, including the enhanced rebates under the Add Volume Tiers under footnote 1 of the fees schedule. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members.

B. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

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."[17]

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 tier changes apply to all Members equally in that all Members continue to be eligible for the Add Volume, Non-Displayed Add Volume, and Step-Up Tiers, have a reasonable opportunity to meet the tiers' criteria and will receive the corresponding additional rebates if such criteria are met. Additionally, the proposed tier changes are designed to attract additional order flow to the Exchange. The Exchange believes that the updated tier criteria would incentivize market participants to direct liquidity adding order flow to the Exchange,

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

bringing with it 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. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges and 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 16%[18] of the market share. 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."[19] The fact that this market is competitive has also

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18 Supra note 3.

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

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'….".[20] 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 Act[21] and paragraph (f) of Rule 19b-4[22] 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

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20 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)).

21 15 U.S.C. 78s(b)(3)(A).

22 17 CFR 240.19b-4(f).

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-2021-084 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-2021-084. 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-2021-084 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.[23]

Jill M. Peterson
Assistant Secretary

[23] 17 CFR 200.30-3(a)(12).