

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93834; File No. SR-CboeBZX-2021-083)

December 20, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change to Amend Rule 25.3, which Governs the Exchange's Minor Rule Violation Plan, in Connection with Certain Minor Rule Violations and Applicable Fines

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 December 6, 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 Options") proposes to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan ("MRVP"), in connection with certain minor rule violations and applicable fines. 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.

¹ 15 U.S.C. 78s(b)(1).

² 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 its MRVP in Rule 25.3 in connection with certain minor rule violations and applicable fines. Rule 25.3 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding.³ Current Rule 25.3(a)-(g) sets forth a list of specific Exchange Rules under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange. Specifically, the proposed rule change amends Rule 25.3 by: (1) eliminating the violation of Rule 22.6(a) in Rule 25.3(c), which currently imposes fines for violations of Rules 22.6(a) through (c) (Market Maker Quotations); (2) relocating violations of Rule 22.6(b) (regarding Market Maker initial quote volume requirements) and Rule 22.6(c) (regarding Market Maker two-sided quote requirements) to Rule 25.3(d),⁴ which currently imposes fines for violations of Rule 22.6(d)

³ The Exchange may, with respect to any such violation, proceed under Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and impose the fine set forth in Rule 25.3(a)-(g).

⁴ As a result of the proposed elimination or relocation of the rule violations listed under Rule 25.3(c), the proposed rule change ultimately eliminates Rule 25.3(c) from the

(regarding Market Maker continuous quoting obligations) so that a single MRVP provision governs violations of a Market Maker’s quoting obligations; and (3) updating the fine schedule applicable to minor rule violations related to a Market Maker Quoting Obligations (i.e., Rules 22.6(b)-(d), as proposed) in Rule 25.3(d).

First, the proposed rule change eliminates the violation of 22.6(a) currently in Rule 25.3(c) of the MRVP. Specifically, Rule 22.6(a) requires a Market Maker to submit bids and offers that are firm for all orders. The Exchange no longer believes violations of Rule 22.6(a) to be minor in nature and therefore proposes to remove it from the list of rules in Rule 25.3 eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of Rule 22.6(a) may directly impact trading on the Exchange, the maintenance of a fair and orderly market and customer protections because honoring firm quotations is vital in promoting efficient functioning of intermarket price priority and trading in general. Pursuant to Rule 25.3, the Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under Chapter VIII (Discipline) rules as to any such violation. The Exchange notes that the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Exchange, Inc. (“Cboe Options”), which recently filed a proposal, approved by the Commission,⁵ to no longer include such violations as eligible for a minor rule disposition on Cboe Options for the same reason—it no longer believed violations of the firm quote requirement to be minor in nature.

MRVP and subsequently renumbers current Rules 25.3(d), 25.3(e), 25.3(f) and 25.3(g) to Rules 25.3(c), 25.3(d), 25.3(e) and 25.3(f), respectively

⁵ See Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR-CBOE-2021-045) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 13.15, Which Governs the Exchange’s Minor Rule Violation Plan).

The proposed rule change next relocates violations of Rules 22.6(b) and (c), currently in Rule 25.3(c) of the MRVP, to Rule 25.3(d) (Rule 25.3(c), as amended)⁶ of the MRVP. The Exchange notes that Rule 22.6 governs Market Maker quoting obligations on the Exchange and, more specifically, Rule 22.6(b) requires a Market Maker to submit initial quotes that contain certain volume and Rule 22.6(c) requires a Market Maker to submit two-sided quotes. As stated above, Rule 25.3(d) currently imposes certain fines for a Market Maker’s failure to meet the continuous quoting obligations in Rule 22.6(d). By relocating violations of Rules 22.6(b) and (c) to join violations of Rule 22.6(d) in Rule 25.3(d) of the MRVP, the proposed rule change amends the MRVP to impose the same fine schedule for violations of a Market Maker’s quoting obligations. The proposed rule change subsequently renames Rule 25.3(d) as “Market Maker Quoting Obligations”. The Exchange notes that the proposed rule change is consistent, and intended to harmonize to the extent possible, with the MRVP of the Exchange’s affiliated options exchange, Cboe Exchange, Inc. (“Cboe Options”), which imposes the one fine schedule for a market maker’s failure to meet its quoting obligations on Cboe Options, including failure to meet continuous quoting requirements and failure to meet initial quote volume requirements.⁷ The Exchange’s affiliated options exchanges, Cboe EDGX Exchange, Inc. (“EDGX Options”) and Cboe C2 Exchange, Inc. (“C2”), also intend to file a proposal to update their MRVPs in connection with the violations of market maker quoting requirements on EDGX Options and C2, to the extent possible, in an identical manner.

Additionally, while current Rule 25.3(c) provides that each paragraph of such sections subject to this Rule shall be treated separately for purposes of determining the number of cumulative

⁶ See supra note 4.

⁷ See Cboe Options Rule 13.15(g)(9).

violations, the corresponding Cboe Options MRVP provision applicable to violations of market maker quoting obligations does not contain this language and Cboe Options may aggregate violations across sections governing market maker quoting obligations. Therefore, in order to harmonize the process for imposing minor rule violation fines for market maker violation of quoting obligations across the Exchange and its affiliated options exchanges,⁸ the proposed rule change does not relocate such language currently in 25.3(c) to Rule 25.3(d), and, as a result, the Exchange will likewise be able to choose to aggregate violations across sections governing market maker quoting obligations. Additionally, the Exchange notes that Rule 25.3(d) already permits the Exchange to aggregate violations of a Market Maker's continuous quoting obligations into a single offense. Specifically, Rule 25.3(d) provides that violations occurring during a calendar month are aggregated and sanctioned as a single offense. To accommodate the addition of the Market Maker two-sided quote and initial quote volume requirements to Rule 25.3(d) and harmonize Rule 25.3(d) with that of Cboe Option's corresponding MRVP provision, the proposed rule change updates this language to provide that violations occurring during a calendar month may be aggregated and sanctioned as a single offense.⁹ The proposed rule change also updates the fine schedule heading in Rule 25.3(d) to

⁸ As indicated above, EDGX Options intends to file a proposal to update its MRVP in connection with violations of market maker quoting requirements on EDGX Options in an identical manner.

⁹ The Exchange also notes that the current provision requiring the Exchange to aggregate and sanction violations as a single offense, applicable to violations of a Market Maker's continuous quoting obligations, currently conflicts with Rule 22.6(d) and a Market Maker's continuous quoting obligations. Specifically, pursuant to Rule 22.6(d)(1), the Exchange determines compliance by a Market Maker with the continuous quoting obligation in Rule 22.6(d) on a monthly basis; however, determining compliance with the continuous quoting obligations on a monthly basis does not relieve a Market Maker from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet this obligation each trading day. Therefore, the Exchange believes that, notwithstanding the proposed relocation of Rules 22.6(b) and (c) to Rule 25.3(d), it should have the flexibility to be able to

reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

The proposed rule change next amends the fine schedule in Rule 25.3(d) (Rule 25.3(c), as amended)¹⁰ applicable to Market Makers for violations of their quoting obligations (Rules 22.6(b)-(d), as proposed) in order to harmonize, to the extent possible, this MRVP provision with the corresponding Cboe Options MRVP provision applicable to violations of a market makers quoting obligations on Cboe Options. The current fine schedule in Rule 25.3(d), currently applicable to violations of a Market Maker's continuous quoting obligations, sets forth the following:

For the first violation during any rolling 24-month period (i.e., one period),¹¹ the fine schedule imposed by Rule 25.3(d) currently permits the Exchange to give a Letter of Caution. For a second violation during the same period, the fine schedule currently permits the Exchange to apply a fine of \$1,000. For a third violation in the same period, the fine schedule currently permits the Exchange to apply a fine of \$25,000. For a fourth violation in the same period, the fine schedule currently permits the Exchange to apply a fine of \$5,000. Finally, for five or more violations in the same period, the fine schedule currently permits the Exchange to proceed with formal disciplinary action.

separately charge for violations of a Market Maker's continuous quoting obligations on a monthly basis and a daily basis.

¹⁰ See supra note 4.

¹¹ See Rule 25.3, which provides that a subsequent violation is calculated on the basis of a rolling 24-month period ("Period").

The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may continue to give a Letter of Caution for a first offense,¹² may apply a fine of \$1,500 for a second offense,¹³ may apply a fine of \$3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses. As described above, and as is the case for all rule violations covered under Rule 25.3, the Exchange may determine that it is appropriate to commence a formal disciplinary proceeding for a violation of Market Maker quoting obligations and may choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange may continue to aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected, and treat such violations as a single offense.¹⁴

The Exchange believes it is appropriate to increase the fine amounts for a second and third offense and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense. Particularly, the Exchange believes that applying a higher fine per second and third offenses in connection with a Market Maker's quoting obligations¹⁵ and, ultimately, formal disciplinary proceedings for any

¹² As stated herein, the proposed rule change also updates the fine schedule heading to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

¹³ Any fine imposed pursuant to the Exchange's MRVP that does not exceed \$2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority. See Rule 8.15(a).

¹⁴ See Rule 8.15(a).

¹⁵ The proposed fine amounts are also an increase from the fines in Rule 25.3(c) currently imposed for violations of Market Maker initial quote volume and two-sided requirements. The Exchange notes, however, that Rule 25.3(c) currently imposes fines per violation whereas Rule 25.3(d) imposes fines per offense, which may be cumulative violations of Market Maker quoting obligations, as proposed.

subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (i.e., formal disciplinary proceedings following a third offense) against repeat-offenders. The Exchange believes this fine structure may serve to more effectively deter repeat-offenders while continuing to provide reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker’s quoting obligations is identical to the fine schedule under the MRVP of Cboe Options for market maker violations of quoting obligations on Cboe Options, including a continuous quoting requirement and initial volume requirement. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange’s MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, EDGX Options and Cboe C2 Exchange, Inc. (“C2”), as EDGX Options and C2 also intend to file proposals to update their minor rule violation fines for violations of market maker quoting requirements on their exchanges in an identical manner.

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

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. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to remove the firm quote requirement, which it no longer considers violations of which to be minor in nature, as eligible for a minor rule fine disposition under its MRVP, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that violations of the firm quote requirement may directly impact trading on the Exchange, maintenance of a fair and orderly market, and customer protection. As such, the Exchange does not believe violations of this rule to be minor in nature and, instead, should be handled under its formal disciplinary rules, rather than imposing fines pursuant to its MRVP. Also, and as stated above, the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Options, which, for the same reasons provided herein, no longer includes violations of the firm quote requirement as eligible for a minor rule disposition on Cboe Options.¹⁹

The Exchange believes that the proposed rule change to apply the same MRVP fine schedule for violations of a Market Makers quoting obligations pursuant to Rule 22.6 (i.e., Rules 22.6(b)-(d)) and the same process for imposing such fines—that is, permitting the Exchange to

¹⁸ Id.

¹⁹ See supra note 5.

aggregate violations of such Market Maker obligations into a single offense—will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade by uniformly imposing penalties and procedures for failure to satisfy obligations governed by the same Rule. Additionally, the Exchange believes the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it is intended to harmonize the Exchange’s MRVP in connection with Market Maker quoting obligations with that of Cboe Options, as well as EDGX Options,²⁰ thereby providing consistent structures and procedures across MRVP provisions applicable to market maker obligations on the affiliated options exchanges.

The Exchange also believes that the proposed rule change, in connection with the fine schedule for violations of a Market Maker’s quoting obligations in Rule 25.3(d), as proposed, to increase the fine amounts for a second and third offense²¹ and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a higher fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (i.e., formal disciplinary proceedings following a

²⁰ See supra note 8.

²¹ See supra note 15.

third offense) against repeat-offenders which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders, while continuing to make first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to violations of Market Maker quoting requirements on Cboe Options, including a continuous quoting requirement and initial quote volume requirement. As described above, EDGX Options and C2 intend to file proposals to update their minor rule violation fines applicable to violations of market maker quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

The Exchange further believes that the proposed rule changes to Rule 25.3 are consistent with Section 6(b)(6) of the Act,²² which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change removes a Rule listed as eligible for a minor rule fine disposition under the Exchange's MRVP that the Exchange no longer believes violations of which are minor in nature and is more appropriately disciplined through the Exchange's formal disciplinary procedures,

²² 15 U.S.C. 78f(b)(6).

amends the MRVP provisions so that the same fine schedule, and process to impose such fines, uniformly applies to violations of a Market Maker's quoting obligations in Rule 22.6, and amends the fine schedule applicable to Market Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.²³ Rule 25.3, currently and as amended, does not preclude an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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 not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with rules eligible for a minor rule fine disposition and with the fine schedule for Market Maker failures to meet their quoting obligations. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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.

²³ 15 U.S.C. 78f(b)(7) and 78f(d).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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. Please include File Number SR-CboeBZX-2021-083 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-2021-083. 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-2021-083, 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.²⁴

Jill M. Peterson
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).