

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-85031; File No. SR-CboeBZX-2018-096)

February 1, 2019

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 December 26, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fee schedule for its equity options platform (“BZX Options”) to (i) reduce the standard rebates for Market Maker orders that add liquidity in Penny Pilot (“Penny”) and Non-Penny Pilot (“Non-Penny”) Securities; (ii) exclude Firm, Broker Dealer (“BD”) and Joint Back Office (“JBO”) orders that add liquidity from the NBBO Setter Tiers, (iii) amend the criteria for NBBO Setter Tier 3, (iv) reduce the rebates for Tier 1 of both the Market Maker Penny Pilot and Non-Penny Pilot Add Volume Tiers; and (v) add a new Away Market Maker Penny Pilot Add Volume Tier, effective January 2, 2019.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 fee schedule for its equity options platform ("BZX Options") to (i) reduce the standard rebates for Market Maker orders that add liquidity in Penny Pilot ("Penny") and Non-Penny Pilot ("Non-Penny") Securities; (ii) exclude Firm, Broker Dealer ("BD") and Joint Back Office ("JBO") orders that add liquidity from the NBBO Setter Tiers, (iii) amend the criteria for NBBO Setter Tier 3, (iv) reduce the rebates for Tier 1 of both the Market Maker Penny Pilot and Non-Penny Pilot Add Volume Tiers; and (v) add a new Away Market Maker Penny Pilot Add Volume Tier, effective January 2, 2019.

Market Maker Add Rebates, Penny and Non-Penny

Currently, the Exchange applies fee code PM to Market Maker orders that add liquidity in Penny Securities and provides such orders a standard rebate of \$0.31 per contract. The Exchange also currently applies fee code NM to Market Maker orders that add liquidity in Non-Penny Securities and provides such orders a rebate of \$0.42 per contract. The Exchange proposes to reduce the standard rebates for these orders. Particularly, the Exchange proposes to reduce the rebate for Market Maker orders that add liquidity in Penny Securities from \$0.31 per contract to \$0.29 per contract. The Exchange proposes to reduce the rebate for Market Maker

orders that add liquidity in Non-Penny Securities from \$0.42 per contract to \$0.40 per contract. The Exchange notes the reduced rebates are in line with the rebates offered at other Exchanges for similar transactions.³

NBBO Setter Tiers

Firm, BD and JBO Orders

The Exchange currently offers five NBBO Setter Tiers under footnote 4, which provide an additional rebate per contract ranging from \$0.01 to \$0.05 for qualifying Non-Customer⁴ orders that add liquidity and establish a new National Best Bid or Offer (“NBBO”) and yield fee code PF, PM or PN. The Exchange proposes to limit the applicability of the NBBO Setter Tiers to fee codes PM and PN and exclude orders that yield fee code PF (i.e., Firm/BD/JBO orders that add liquidity in Penny Securities). The Exchange no longer wishes to extend this additional incentive to such orders. The Exchange notes that orders that yield fee code PF already have the opportunity to receive enhanced rebates under the Firm, Broker Dealer and Joint Back Office Penny Pilot Add Volume Tiers.⁵

NBBO Setter Tier 3

The Exchange next proposes to modify the required criteria under NBBO Setter Tier 3. Currently under Tier 3, a Member may receive an additional rebate of \$0.03 per

³ See e.g., Nasdaq Gemini Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides a standard Maker rebate for Market Makers of \$0.28 per contract for Penny Symbols and \$0.40 per contract for Non-Penny Symbols.

⁴ “Non-Customer” applies to any transaction identified by a Member for clearing which is not in the Customer range at the OCC, excluding any transaction for Broker Dealer or a “Professional” as defined in Exchange Rule 16.1.

⁵ See Cboe BZX Options Fee Schedule, Footnote 2.

share where they have an: (i) ADAV⁶ in Non-Customer orders greater than or equal to 0.50% of average OCV⁷; and (ii) an ADAV in Firm, Market Maker and Away Market Maker orders that establish a new NBBO greater than or equal to 0.05% of average OCV.

The Exchange proposes to amend the ADAV threshold in the first prong. Specifically, the first prong of Tier 3 would be amended to require an increased ADAV in Non-Customer orders greater than or equal to 0.80% of average OCV (instead of 0.50%).

Market Maker Volume Tiers

The Exchange currently offers three Market Maker Penny Pilot Add Volume Tiers under Footnote 6, and two Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7, of the Fee Schedule which provide enhanced rebates per contract to a Member's order that yields fee code PM and NM, respectively, upon satisfying monthly volume criteria. The Exchange wishes to reduce the rebates under Tier 1 of both the Market Maker Penny and Non-Penny Add Volume Tier programs. Currently, a member may receive an enhanced rebate of \$0.35 per contract under Tier 1 of the Market Maker Penny Add Volume Tier program where the Member has an ADAV in Market Maker orders greater than or equal to 0.05% of average OCV. The Exchange proposes to reduce the rebate under Tier 1 from \$0.35 per contract to \$0.33 per contract. Under Tier 1 of the Market Maker Non-Penny Add Volume Tier Program, a Member may receive an enhanced rebate of \$0.45 per contract where the Member has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV. The Exchange proposes to reduce this rebate from \$0.45

⁶ "ADAV" means average daily added volume calculated as the number of contracts added per day. See Cboe BZX Options Fee Schedule.

⁷ "OCC Customer Volume" or "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close. See Cboe BZX Options Fee Schedule.

per contract to \$0.43 per contract.

Away Market Maker Volume Tier

Currently, Away Market Maker orders that add liquidity in Penny Securities (i.e., yield fee code PN), receive a standard rebate of \$0.26 per contract. The Exchange currently offers an enhanced rebate of \$0.45 per contract for orders yielding fee code PN under the Away Market Maker Penny Pilot Add Volume Tier program under Footnote 10 of the Fee Schedule, where a Member satisfies specific monthly volume criteria. The Exchange proposes to add a new volume tier under Footnote 10. Particularly, the Exchange proposes to provide that orders yielding fee code PN may qualify for an enhanced rebate of \$0.38 per contract where a Member has an ADAV in Non-Customer, Non-Market Maker orders greater than or equal to 0.50% of average OCV. In connection with the proposed new tier, the Exchange proposes to renumber current Tier 1 under this program to Tier 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Section 6 of the Act,⁸ in general, and Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

First, the Exchange believes reducing the standard rebates for Market Maker orders that add liquidity in Penny and Non-Penny Securities is reasonable because Market Maker orders that add liquidity still receive a rebate for doing so (albeit a lesser rebate than before) and because the Exchange believes the proposed changes will still continue to encourage such transactions.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

Additionally, the Exchange notes that the proposed standard rebates are still in line with, and similar to, rebates offered by other exchanges for similar transactions.¹⁰ The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply uniformly to all Market Makers that add liquidity.

Next, the Exchange believes that its proposal to remove fee coded PF from footnote 4, NBBO Setter Tiers, is reasonable, equitable and non-discriminatory because orders that yield fee code PF will merely no longer receive an additional incentive rebate. Additionally, although these orders will no longer be able to qualify for NBBO Setter Tiers, there are additional ways for orders yielding fee code PF to receive enhanced rebates, such as via the Firm, Broker Dealer and Joint Back Office Penny Pilot Add Volume Tiers.¹¹ The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to all orders that yield fee code PF.

The Exchange next notes that volume-based discounts such as those currently maintained on the Exchange have been widely adopted by options exchanges and are equitable 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 of an exchange's market quality; (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. While the proposed modification to the existing NBBO Setter Tier 3 makes such tier more difficult to attain, the Exchange believes it continues to incentivize Members to send Non-

¹⁰ See e.g., Nasdaq Gemini Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides a standard Maker rebate for Market Makers of \$0.28 per contract for Penny Symbols and \$0.40 per contract for Non-Penny Symbols.

¹¹ See Cboe BZX Options Fee Schedule, Footnote 2.

Customer orders to the Exchange in an effort to qualify or continue to qualify for the additional rebate made available by the tier. The Exchange also believes the proposed change is reasonable as the rebate corresponding to NBBO Setter Tier 3 is not changing. The Exchange further notes that the Exchange believes the tier criteria, as amended, is more commensurate with the corresponding rebate offered. The Exchange believes the proposed change is equitable and nondiscriminatory because the proposed change applies uniformly to all Market Makers and Away Market Makers.

The Exchange believes reducing the rebates under Tier 1 of both the Market Maker Penny and Non-Penny Add Volume Tiers is reasonable because Market Maker orders that add liquidity and meet the corresponding required volume criteria still receive an enhanced rebate for doing so (albeit a lesser rebate than before) and because the Exchange believes the proposed changes will continue to encourage such transactions. The Exchange also believes the enhanced rebates, even as amended, will continue to provide an incremental incentive for Members to strive for higher tier level, which provides increasingly higher rebates. Additionally, the Exchange notes that the proposed standard rebates are still in line with, and similar to, rebates offered by other exchanges for similar transactions.¹² The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply uniformly to all Market Makers that add liquidity.

The Exchange believes the proposal to add a new Away Market Maker Add Volume Tier under footnote 10 is reasonable because it provides Members an additional opportunity to

¹² See e.g., Nasdaq Gemini Pricing Schedule, Section 3, Regular Order Fees and Rebates, which provides enhanced Maker rebates for Market Makers between \$0.30 - \$0.45 per contract for Penny Symbols and between \$0.42 - \$0.75 per contract for Non-Penny Symbols.

receive an enhanced rate for orders that add liquidity and is a reasonable means to encourage Members to increase their liquidity on the Exchange. Increased liquidity would benefit all investors. The Exchange further believes the proposed threshold is commensurate with the proposed enhanced rebate. The proposed fee change is equitable and non-discriminatory because it applies uniformly to all Members.

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

The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed changes for each separate type of market participant will be assessed equally to all such market participants. While different fees are assessed to different market participants in some circumstances, these different market participants have different obligations and different circumstances as discussed above. For example, Market Makers have quoting obligations that other market participants do not have. Further, the Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other

interested parties.

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 Act¹³ and paragraph (f) of Rule 19b-4¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

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-2018-096 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.

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CboeBZX-2018-096. 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-2018-096 and should be submitted on or before [insert date 15 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Eduardo A. Aleman
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).