

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88159; File No. SR-CboeBZX-2020-013)

February 11, 2020

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 January 31, 2020, 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 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 Equities Exchange (the “Exchange” or “BZX Equities”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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

¹ 15 U.S.C.78s(b)(1).

² 17 CFR 240.19b-4.

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 to amend the rate for liquidity adding orders that yield fee codes “V”³ and “Y”.⁴ Additionally, the Exchange proposes to eliminate existing Add Volume Tier 1, Step-Up Tier 2, and Cross-Asset Add Volume Tiers 1 through 4. The Exchange also proposes to make corresponding changes to the numbering of the Add Volume Tiers and Step-Up Tiers.

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 13 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,⁵ no single registered equities exchange has more than approximately 16% of the market share. Thus, in such a low-concentrated and highly

³ “V” is appended to displayed orders that add liquidity to BZX Equities (Tape A).

⁴ “Y” is appended to displayed orders that add liquidity to BZX Equities (Tape C).

⁵ See Cboe Global Markets, U.S. Equities Market Volume Summary (January 29, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

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 provide liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for orders priced at or above \$1.00, the Exchange provides a standard rebate of \$0.0020⁶ to \$0.0025⁷ per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Change to Amend standard rebate for Liquidity Adding Orders in Securities at or Above \$1.00

The Exchange currently provides rebates for liquidity adding orders that yield fee codes “V” or “Y” of \$0.0020 in securities priced at or above \$1.00 in Tape A or C securities. Liquidity adding orders yielding fee code “B”⁸ are provided a rebate of \$0.0025 in securities priced at or above \$1.00 in Tape B securities. The Exchange now proposes to increase the current rebate of \$0.0020 per share to \$0.0025 per share for orders yielding fee codes “V” and “Y” in securities

⁶ Displayed orders which add liquidity in Tape B securities receive a standard rebate of \$0.0025 per share.

⁷ Displayed orders which add liquidity in Tape A and C securities receive a standard rebate of \$0.0020 per share.

⁸ “B” is appended to displayed orders that add liquidity to BZX Equities (Tape B).

priced at or above \$1.00 in Tape A and Tape C securities. As the proposed rebate for orders yielding fee code “V” or “Y” is higher than the current rebate for such orders, the Exchange believes the proposed amendment will encourage Members to increase their liquidity on the Exchange.

Proposed Change to Eliminate Tier 1 of the Add Volume Tiers

In response to the competitive environment, the Exchange 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 incremental incentives for Members to strive for higher or different tier levels by offering increasingly higher discounts or enhanced benefits for satisfying increasingly more stringent criteria or different criteria. For example, pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers Tier 1 of the Add Volume Tiers which provides Members with a higher rebate of \$0.0025 per share for liquidity adding orders yielding fee codes “B”, “V”, or “Y” when the Member has an ADAV⁹ as a percentage of TCV¹⁰ greater than or equal to 0.10%. Currently, orders yielding fee codes “V” and “Y” provide a standard rebate of \$0.0020; however, the proposed amendment to fee codes “V” and “Y” would increase the standard rebate from \$0.0020 to \$0.0025. As a result, the rebate provided under Tier 1 would be equal to the proposed standard rebate of \$0.0025 applicable to orders yielding fee codes “V” or “Y” and the existing standard rebate of \$0.0025 applicable to orders yielding fee code “B”. Therefore, the Exchange proposes to eliminate Tier 1 of the Add Volume Tiers and renumber the remaining tiers accordingly.

⁹ ADAV means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ 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.

Proposed Change to Eliminate Cross-Asset Add Volume Tiers 1 through 4 of the Add Volume Tiers

Footnote 1 of the Fee Schedule currently provides for the Cross-Asset Add Volume Tiers 1 through 4, which provide enhanced rebates ranging from \$0.0028 to \$0.0030 per share to Members meeting (1) a certain ADV¹¹ percentage as compared to the TCV on BZX Equities, and (2) certain liquidity adding option volume on the Cboe BZX Options Exchange (“BZX Options”) as compared to the OCV.¹² The Exchange adopted the Cross-Asset Add Volume Tiers to encourage Members to add liquidity on both BZX Equities and BZX Options. The Exchange now proposes to eliminate the four Cross-Asset Add Volume Tiers. Particularly, no Member has reached any of these tiers in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such tiers.

Proposed Change to Eliminate Tier 2 of the Step-Up Tiers

Footnote 2 of the Fee Schedule currently provides for Tier 2 of the Step-Up Tiers, which provides an enhanced rebate of \$0.0030 per share for Members with Step-Up Add TCV¹³ from April 2016 equal to or greater than 0.15% and an ADAV as a percentage of TCV equal to or greater than 0.20%. The Exchange adopted Tier 2 of the Step-Up Tiers to encourage Members to grow their ADAV on the Exchange on a monthly basis from an April 2016 baseline. The Exchange now proposes to eliminate the Tier 2 of the Step-Up Tiers. Particularly, no Member

¹¹ ADV means average daily volume.

¹² 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, using the definition of Customer as provided under the Exchange's Fee Schedule for BZX Options.

¹³ "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.

has reached Tier 2 of the Step-Up Tiers in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such tier. The Exchange no longer believes Tier 2 is necessary and notes the Exchange is not required to maintain such an incentive program. Additionally, the Exchange proposes to re-number Step-Up Tiers 4 and 5 to reflect the elimination of Step-Up Tier 2.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(4),¹⁵ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also 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. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange 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.

¹⁴ 15 U.S.C. 78f.

¹⁵ 15 U.S.C. 78f(b)(4).

In particular, the Exchange believes the proposed amendment to increase the rebate for orders yielding fee codes “V” and “Y” from \$0.0020 to \$0.0025 is reasonable because it would uniformly provide a rebate of \$0.0025 per share across Tape A, Tape B, and Tape C securities priced at or above \$1.00. Further, the Exchange believes the proposed increased rebate will encourage additional order flow on the Exchange, which may result in greater liquidity to the benefit of all market participants on the Exchange by providing more trading opportunities. The Exchange also believes the proposed amendment to remove existing Tier 1 of the Add Volume Tiers is reasonable because the tier offers the same rebate as the proposed standard rebate for orders yielding fee codes “V” and “Y” and the existing standard rebate for orders yielding fee code “B”. Therefore, existing Tier 1 of the Add Volume Tiers would provide no further incentive for Members to achieve an ADAV greater than or equal to 0.10% as a percentage of TCV. The Exchange believes the proposed changes are equitable and not unfairly discriminatory because they apply equally to all Members.

The Exchange believes eliminating the Cross-Asset Add Volume Tiers 1 through 4 and Step-Up Tier 2 is reasonable because the Exchange is not required to maintain these tiers and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates, including the proposed enhanced standard rebate to orders yielding fee code “V” or “Y”. Moreover, as noted above, no Member has achieved these tiers in several months. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members.

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 intramarket or intermarket 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 change

would encourage the submission of additional displayed 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 change furthers 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.”¹⁶

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible to receive the enhanced standard rebate for orders yielding fee code “V” or “Y”. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the modified standard rebate for orders yielding fee code “V” or “Y” would incentivize market participants to direct displayed liquidity and, as a result, executable order flow and improved price transparency, to the Exchange. Greater overall order flow and pricing transparency benefits all market participants on the Exchange by providing more trading opportunities, enhancing market quality, and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants. 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

¹⁶ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

order flow, including 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 approximately 16% of the market share.¹⁷ 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.”¹⁸ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o 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’”¹⁹

¹⁷ See *supra* note 5.

¹⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁹ *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)).

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 has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited 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 is effective upon filing pursuant to Section 19(b)(3)(A)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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 under Section 19(b)(2)(B)²² of the Act 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:

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

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 No. SR-CboeBZX-2020-013 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, D.C. 20549-1090.

All submissions should refer to File No. SR-CboeBZX-2020-013. 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, D.C. 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 No. SR-CboeBZX-2020-013, 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

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).