

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91921; File No. SR-CboeBZX-2021-023)

May 18, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Approving a Proposed Rule Change to Extend the Cutoff Time for Accepting on Close Orders Entered for Participation in the Exchange’s Closing Auction and to Clarify Changes to the Definitions of Late-Limit-On-Close and Late-Limit-On-Open Orders

I. Introduction

On March 26, 2021, Cboe BZX Exchange, Inc. (“Cboe BZX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² a proposed rule change to modify Exchange Rule 11.23 to amend the cutoff time for accepting on close orders entered for participation in the Exchange’s Closing Auction and to make clarifying changes to the definitions of Late-Limit-On-Close and Late-Limit-On-Open orders. The proposed rule change was published for comment in the Federal Register on April 9, 2021.³ The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

Exchange Rule 11.23(c) currently provides that Users may submit Limit-on-Close (“LOC”)⁴ and Market-on-Close (“MOC”)⁵ orders to the Exchange until 3:55 p.m. ET (“Closing

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91479 (April 5, 2021), 86 FR 18580 (“Notice”).

⁴ Exchange Rule 11.23(a)(13) defines Limit-on-Close as “... a BZX limit order that is designated for execution only in the Closing Auction.”

⁵ Exchange Rule 11.23(a)(15) defines Market-on-Close as “... a BZX market order that is designated for execution only in the Closing Auction or Cboe Market Close.”

Auction Cutoff”), at which point any additional LOC and MOC orders will be rejected.⁶ Users may submit Late-Limit-on-Close (“LLOC”)⁷ orders between 3:55 p.m. and 4:00 p.m. and any LLOC orders submitted before 3:55 p.m. or after 4:00 p.m. will be rejected.⁸ Exchange Rule 11.23(c) also provides that Eligible Auction Orders⁹ designated for the Exchange’s Closing Auction¹⁰ may not be cancelled between 3:55 pm and 4:00 pm.¹¹

As described in more detail in the Notice,¹² the Exchange now proposes to amend Exchange Rule 11.23(c) to extend the cutoff time for accepting on close orders to permit the submission of LOC and MOC orders until 3:59 p.m. ET, to allow the submission of LLOC orders between 3:59 p.m. and 4:00 p.m. ET, and to prevent the cancellation of Eligible Auction Orders designated for the Closing Auction between 3:59 p.m. and 4:00 p.m. ET. As proposed, Exchange Rule 11.23(c)(1)(A) would provide that Users may submit LOC and MOC orders until 3:59 p.m., at which point any additional LOC and MOC orders submitted would be rejected. Proposed Exchange Rule 11.23(c)(1)(A) would also provide that users may submit LLOC orders

⁶ See Exchange Rule 11.23(c)(1)(A).

⁷ Exchange Rule 11.23(a)(11) defines “Late-Limit-On-Close” as “... a BZX limit order that is designated for execution only in the Closing Auction. To the extent a LLOC bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOC bid or offer, respectively, will assume its entered limit price.”

⁸ See Exchange Rule 11.23(c)(1)(A).

⁹ See Exchange Rule 11.23(a)(8).

¹⁰ See Exchange Rule 11.23(c).

¹¹ See Exchange Rule 11.23(c)(1)(B).

¹² See Notice, supra note 3.

between 3:59 p.m. and 4:00 p.m., and any LLOC orders submitted before 3:59 p.m. or after 4:00 p.m. would be rejected. As proposed, Exchange Rule 11.23(c)(1)(B) would provide that Eligible Auction Orders designated for the Closing Auction may not be cancelled between 3:59 p.m. and 4:00 p.m.

The Exchange also proposes to amend the definitions of LLOC and Late-Limit-on-Open (“LLOO”)¹³ in Exchange Rule 11.23(a). Currently, Exchange Rules 11.23(a)(11) and (a)(12) provide that, to the extent a LLOC or LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the National Best Bid (“NBB”) or National Best Offer (“NBO”), the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOC or LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOC or LLOO bid or offer, respectively, will assume its entered limit price. The Exchange proposes to amend these definitions to clarify that, rather than never be adjusted to a

¹³ Exchange Rule 11.23(a)(12) defines the term Late-Limit-On-Open as “... a BZX limit order that is designated for execution only in the Opening Auction. To the extent a LLOO bid or offer received by the Exchange has a limit price that is more aggressive than the NBB or NBO, the price of such bid or offer is adjusted to be equal to the NBB or NBO, respectively, at the time of receipt by the Exchange. Where the NBB or NBO becomes more aggressive, the limit price of the LLOO bid or offer will be adjusted to the more aggressive price, only to the extent that the more aggressive price is not more aggressive than the original User entered limit price. The limit price will never be adjusted to a less aggressive price. If there is no NBB or NBO, the LLOO bid or offer, respectively, will assume its entered limit price. Notwithstanding the foregoing, a LLOO order entered during the Quote-Only Period of an IPO will be converted to a limit order with a limit price equal to the original User entered limit price and any LLOO orders not executed in their entirety during the IPO Auction will be cancelled upon completion of the IPO Auction.”

less aggressive price, the limit price of a LLOC order or a LLOO order would not be adjusted to a less aggressive price, unless otherwise provided by Exchange rules. The Exchange stated that, for example, a short sale LLOO or LLOC order entered at a price less than the NBB while a short sale circuit breaker pursuant to Regulation SHO was in effect would be re-priced by the Exchange's System¹⁴ at one minimum price variation above the NBB pursuant to Exchange Rules 11.9(g)(5) and (6).¹⁵

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁶ Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,¹⁷ which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

¹⁴ Exchange Rule 1.5(aa) provides that the term "System" means "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away."

¹⁵ See Notice, supra note 3, at 18581.

¹⁶ 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁷ 15 U.S.C. 78f(b)(5).

As discussed above, the Exchange proposes to amend Exchange Rule 11.23(c) to extend the cutoff time for accepting on close orders to permit the submission of LOC and MOC orders until 3:59 p.m.,¹⁸ to allow the submission of LLOC orders between 3:59 p.m. and 4:00 p.m.,¹⁹ and to prevent the cancellation of Eligible Auction Orders designated for the Closing Auction between 3:59 p.m. and 4:00 p.m.²⁰ The Exchange asserts that extending the Closing Auction Cutoff for submitting on close orders will assist market participants in managing their trading at the close by allowing them to retain control over their orders for a longer period of time.²¹ The Exchange expects that this would reduce risk for those market participants participating in the Closing Auction and improve price discovery by facilitating the additional participation of market participants.²² The Commission believes that extending the cutoff time to submit LOC, MOC and LLOC orders and to cancel Eligible Auction Orders to 3:59 p.m. ET would allow market participants to retain flexibility with respect to submitting and cancelling their orders, while still providing time for market participants to react to and offset imbalances. As a result, the Commission believes that the proposal could encourage participation in the Closing Auction by market participants that are unwilling to give up flexibility and control over these orders. The Commission notes that the Exchange has represented that another exchange uses a 3:59 p.m. ET cutoff time for the entry of MOC and LOC orders in its closing auction.²³

¹⁸ See proposed Exchange Rule 11.23(c)(1)(A).

¹⁹ Id.

²⁰ See proposed Exchange Rule 11.23(c)(1)(B).

²¹ See Notice, supra note 3, at 18581.

²² Id. at 18582.

²³ Id. at 18581, 18582.

In addition, as discussed above, the Exchange proposes to amend the definitions of LLOC and LLOO in Exchange Rule 11.23(a), which currently state that the limit price of these orders will never be adjusted to a less aggressive price, in order to clarify that the limit price of LLOC and LLOO orders, respectively, would not be adjusted to a less aggressive price unless otherwise provided by Exchange rules.²⁴ The Exchange has explained that its System, in certain instances, may adjust the limit price of LLOC and LLOO orders to a less aggressive price pursuant to other Exchange Rules.²⁵ The Commission believes that the proposed amendments to the definitions of LLOC and LLOO would provide greater transparency regarding the operation of the Exchange.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-CboeBZX-2021-023) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁴ See proposed Exchange Rules 11.23(a)(11) and (a)(12).

²⁵ See supra note 15 and accompanying text.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.300-3(a)(12).