SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 92408; File No. SR-CboeBZX-2021-050)

July 14, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule to Eliminate the Opt-In Functionality Offered under the Lead Market Maker Pricing

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 July 12, 2021, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") filed with the Securities and Exchange Commission ("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

Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the 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 the Fee Schedule applicable to its equities trading platform ("BZX Equities") to eliminate the opt-in functionality offered under the Lead Market Maker ("LMM") Pricing provided under footnote 14. Specifically, the Exchange is proposing to automatically provide an LMM with the greater of the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate instead of requiring an LMM to opt-in.[3]

The Exchange currently offers a comprehensive liquidity provision program to incentivize LMMs to provide enhanced market quality across all BZX-listed securities. Specifically, as provided in paragraph (A) of footnote 14, the Exchange offers the LMM Liquidity Provision Rates which provide LMMs daily incentives that are based on whether the LMM meets certain performance based criteria (i.e., the applicable Minimum Performance Standard[4]).[5] The Exchange provides each LMM with a daily incentive based on how many

---

3 The Exchange initially filed the proposed fee changes July 1, 2021 (SR-CboeBZX-2021-049). On July 12, 2021, the Exchange withdrew that filing and submitted this proposal.

4 As defined in Rule 11.8(e)(1)(E), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread..[sic]

5 The current Minimum Performance Standards include: (i) registration as a market maker in good standing with the Exchange; (ii) time at the inside requirements (generally between 3% and 15% of Regular Trading Hours for Qualified Securities and between 5%

Qualified Securities or Enhanced Securities[6] the LMM has and the average aggregate daily auction volume in the BZX-listed securities for which it is an LMM ("LMM Securities"). The LMM Liquidity Provision Rates were implemented to incentivize LMMs to meet the Minimum Performance Standards across all of their LMM Securities, especially for newly listed and other lower volume securities. The Exchange also currently offers, as provided in paragraph (B) of footnote 14, the LMM Add Liquidity Rebate which is available to LMMs in BZX-listed securities that have a consolidated average daily volume ("CADV")[7] equal to or greater than 1,000,000 (an "ALR Security"). The LMM Add Liquidity Rebate allows the Exchange to offer LMM pricing comparable to other traditional LMM programs available on other listing venues.

---

to 50% for Enhanced Securities, depending on the average daily volume of the applicable LMM Security); (iii) auction participation requirements (generally requiring that the auction price is between 3% and 5% of the last Reference Price, as defined in Rule 11.23(a)(19), for a Qualified Security and 1%-3% for an Enhanced Security (the "Enhanced Auction Range"); (iv) market-wide NBB and NBO spread and size requirements (generally requiring between 200 and 750 shares at both the NBB and NBO for both Qualified Securities and Enhanced Securities with an NBBO spread between 1% and 10% for a Qualified Security and .25% to 4% for Enhanced Securities, depending on price of the security and underlying asset class); and (v) depth of book requirements (generally requiring between $25,000 and $250,000 of displayed posted liquidity for both Qualified Securities and Enhanced Securities within 1% to 10% of both the NBB and NBO for Qualified Securities and 0.25% and 5% for Enhanced Securities, depending on price of the security and underlying asset class). See Securities Exchange Act No. 86213 (June 27, 2019) 84 FR 31951 (July 3, 2019) (SR-CboeBZX-2019-058) (the "Original Filing"). The Exchange notes that as of February 1, 2021, the Enhanced Auction Range will be .50%-3%. The Original Filing provides that "[b]efore diverging significantly from the ranges described above, the Exchange will submit a rule filing to the Commission describing such proposed changes." The Exchange does not believe that this change represents a "significant divergence" but is instead noting the change in order to provide transparency regarding the current state of the Minimum Performance Standards.

6 An "Enhanced Security" refers to a BZX-listed security which meets certain enhanced qualifying market quality standards.

7 "CADV" means consolidated average daily volume calculated as the average daily volume reported for a security by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the three calendar months preceding the month for which the fees apply and excludes volume on days when the market closes early and on the Russell Reconstitution Day.

Specifically, the LMM Add Liquidity Rebate encourages LMMs to meet the Minimum Performance Standards for Qualified Securities, but also provides the potential for additional incentives for higher volume securities.

As currently constructed, an LMM in an ALR Security that wants to participate must proactively opt-in to the program using the Exchange's ETP Portal. Further, an LMM that opts in to the LMM Add Liquidity Rebate program will receive the LMM Add Liquidity Rebate regardless of whether they would have been better off receiving the LMM Liquidity Provision Rates.

Now, the Exchange proposes to eliminate the opt-in requirement, and instead proposes to automatically apply either the LMM Add Liquidity Rebate or LMM Liquidity Provision Rates for each ALR Security based on whichever would result in a greater total rebate in a particular calendar month. In determining the applicable rebate on a monthly basis for each ALR Security, the Exchange will choose the greater of: (i) the monthly total LMM Liquidity Provision Rates + (the applicable per share rebate that the LMM would receive for adding liquidity in the ALR Security x the number of shares for which the LMM added liquidity in the ALR Security); and (ii) $0.0039 x the number of shares for which the LMM added liquidity in the ALR Security. If an LMM Security does not meet the CADV requirement to be an ALR Security and become eligible to receive the LMM Add Liquidity Rebate, the LMM will continue to be subject to the LMM Liquidity Provision Rates by default.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[9] in

[8] 15 U.S.C. 78f.

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. The Exchange also notes that its listing business operates in a highly competitive market in which market participants, which includes both issuers and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The LMM pricing as a whole reflects a competitive pricing structure designed to incentivize issuers to list new products and transfer existing products to the Exchange and market participants to enroll and participate as LMMs on the Exchange, which the Exchange believes will enhance market quality in all securities listed on the Exchange. The proposed amendment to the program is designed to provide an automated value-add service to LMMs without changing the pricing structure of the program.

The Exchange believes that the proposal is reasonable because it provides a value-added service to LMMs without changing the fees and rebates applicable to LMMs under footnote 14 of the fee schedule. Specifically, the proposal will streamline the LMM pricing process by eliminating the requirement that an LMM opt-in to the LMM Add Liquidity Rebate. As described above, under the proposal an LMM would also no longer have to consider whether it would receive higher incentives under the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate on a per security and per month basis. Instead, the Exchange will automatically apply whichever rate is greater in that ALR Security for the month. Further, as noted above, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous

---

[9] 15 U.S.C. 78f(b)(4) and (5).

reasons, including market quality. The proposal is designed to enhance the existing LMM program and is intended to help the Exchange compete as a listing venue by streamlining the process for LMMs to maximize their incentives. Further, the proposal does not change any of the existing LMM fees or incentives provided under footnote 14.

The Exchange believes the LMM Add Liquidity Rates coupled with the LMM Liquidity Provision Rates will continue to create a comprehensive incentive structure that encourages participation and, further, competition among LMMs. The proposal is intended to enhance the existing incentive structure, and encourage participation among LMMs. The Exchange believes that increased participation among LMMs will result in better market quality across all of its listings, resulting in greater market quality to the benefit of investors and other market participants.

The Exchange believes that the proposal represents an equitable allocation of payments and is not unfairly discriminatory because, while the LMM pricing is currently and will continue to apply only to LMMs, such LMMs must meet rigorous Minimum Performance Standards[10] in order to receive the rebates provided under footnote 14. Where an LMM does not meet the Minimum Performance Standards for the applicable LMM Security, they will not be eligible for those rebates. Further, registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is

---

[10] As defined in Rule 11.8(e)(1)(E), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread..[sic]

subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. As discussed above, the proposed changed merely eliminates the requirement that an LMM opt-in to the LMM Add Liquidity Rebate and instead will automatically provide an LMM with the greater of the LMM Liquidity Provision Rates or the LMM Add Liquidity Rebate.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, or competing listing venues to maintain their competitive standing. The Exchange does not believe the proposed amendment would burden intra-market competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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[11] and paragraph (f) of Rule 19b-4[12] 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-2021-050 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.

---

11 15 U.S.C. 78s(b)(3)(A).

12 17 CFR 240.19b-4(f).

All submissions should refer to File Number SR-CboeBZX-2021-050. 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-2021-050 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.[13]

J. Matthew DeLesDernier
Assistant Secretary

---

[13] 17 CFR 200.30–3(a)(12).