

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93754; File No. SR-CboeBZX-2021-080)

December 13, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule By Modifying Certain Auction Fee Codes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 30, 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, 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” or “BZX Equities”) proposes 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/](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 proposed rule change. The text of these statements may be examined at the places specified in

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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 by modifying certain auction fee codes.<sup>3</sup>

The Exchange assesses fees for orders in BZX listed securities that execute in an Opening, Initial Public Offering (“IPO”), Halt, or Closing Auction. Now, the Exchange proposes to modify certain auction fees provided under the Fee Codes and Associated Fees section of the Fee Schedule. First, the Exchange proposes to increase the fee associated with fee code AL,<sup>4</sup> which is currently free, to \$0.0010 per share. Second, the Exchange proposes to increase the fee associated with fee code AN,<sup>5</sup> which is also currently free, to \$0.0006 per share. Third, the Exchange proposes to increase the fee associated with fee code AO,<sup>6</sup> which is currently \$0.0005 per share, to \$0.00075 per share. Finally, the Exchange proposes to increase the fee associated with fee code AP,<sup>7</sup> which is currently free, to \$0.00075 per share.

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<sup>3</sup> The Exchange initially filed the proposed fee changes November 1, 2021 (SR-CboeBZX-2021-074). On November 12, 2021, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR-CboeBZX-2021-077). On November 23, 2021, the Exchange withdrew that filing and re-submitted the proposed fee changes (SR-CboeBZX-2021-079). On November 30, 2021, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> Fee code AL is appended to orders executed in the Closing Auction and Late-Limit-On-Close orders in BZX listed securities.

<sup>5</sup> Fee code AN is appended to continuous book orders that are executed in the Opening or Closing Auction in BZX listed securities.

<sup>6</sup> Fee code AO is appended to order executed in an Opening, IPO or Halt Auction in BZX listed securities.

<sup>7</sup> Fee code AP is appended to orders executed in the Opening, IPO or Halt Auction in BZX

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Securities Exchange Act of 1934 (the “Act”),<sup>8</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),<sup>9</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities.

The Exchange believes that its proposal to increase the fees applicable to fee codes AL, AN, AO, and AP are fair, equitable and reasonable because the proposed fees remain consistent with pricing offered by competitor exchanges. Specifically, NYSE Arca, Inc. (“Arca”)<sup>10</sup> charges, in securities priced at or above \$1.00, a fee of either \$0.0012 per share or \$0.0015 per share to executions resulting from “auction orders”.<sup>11</sup> In securities priced below \$1.00, Arca charges 0.1% of the dollar value, which is applied to all orders executed in the early open auction, core open auction, trading halt auction or closing auction. Last, Arca charges a fee of \$0.0006 per share for executions in an auction, other than “auction orders”. The Exchange also believes that its proposal to increase the fees applicable to fee codes AL, AN, AO, and AP are fair, equitable and reasonable because the proposed fees do not represent a significant departure from the Exchange’s general pricing structure. Specifically, the proposed fees for Fee Code AL and AN

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listed securities as well as Late-Limit-On-Open orders in BZX listed securities.

<sup>8</sup> 15 U.S.C. 78f.

<sup>9</sup> 15 U.S.C. 78f(b)(4) and (5).

<sup>10</sup> See the Arca fee schedule at [https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE\\_Arca\\_Marketplace\\_Fees.pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf).

<sup>11</sup> The Arca fee schedule states that “auction orders” means market orders, market-on-close orders, limit-on-close orders and auction-only orders executed in an Arca auction. Id at Section I. Definitions.

are in-line or less than the fees currently assessed by the Exchange for orders routed to an away listing market for participation in the closing process (i.e., orders yielding fee code CL) and the proposed fees for Fee Codes AO and AP are less than the fees currently assessed by the Exchange for orders routed to an away listing market for participation in the opening or re-opening cross (i.e., orders yielding fee code O). Therefore, the Exchange believes the proposed fees associated with fee codes AL, AN, AO and AP remain consistent with pricing offered by a competing exchange and does not represent a significant departure from the Exchange's general pricing structure.

Furthermore, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer Exchange-Traded Product ("ETP") listings. Transfers between listing venues occur frequently and for numerous reasons, such as market quality, which includes executions in the opening and closing auctions. Accordingly, competitive forces constrain the Exchange's auction fees, and issuers can transfer listings to competing listing venues if they deem the listing fees or market quality at those other venues to be more favorable. The proposed rule changes reflect a competitive pricing structure, which, as noted above, is substantively similar to fees charged by Arca.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Members will continue to have the option to elect to submit their orders for participation in auctions for BZX listed securities in the same manner and will be automatically and uniformly assessed the applicable fees for such auction orders. Auction participation on the Exchange is optional, and the Exchange operates in a competitive environment where issuers can transfer listings to competing listing venues if they deem the listing fees or market quality at those other venues to be more favorable.

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 that the proposed modifications represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors, as discussed above. Issuers 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 ETP issuers or competing venues to maintain their competitive standing in the financial markets. The Exchange does not believe the proposed fees would burden intramarket competition as they would be assessed to all Members who participate in Exchange auctions uniformly.

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<sup>12</sup> and paragraph (f) of Rule 19b-4<sup>13</sup> 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.

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-080 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-2021-080. 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 Number SR-CboeBZX-2021-080 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.<sup>14</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>14</sup> 17 CFR 200.30-3(a)(12).