

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94252; File No. SR-CboeBZX-2022-008)

February 15, 2022

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 February 7, 2022, 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/), 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

¹ 15 U.S.C. 78s(b)(1).

² 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 to decrease the standard liquidity adding rebate for orders in securities at or above \$1.00 and to eliminate Tier 3 of the Single MPID Investor Tiers. The Exchange proposes to implement the proposed change to its fee schedule on February 1, 2022.³

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 16 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 Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 18% of the market share. Thus, in such a low-concentrated and highly 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 add liquidity and assesses fees to those that remove liquidity. The

³ The Exchange initially filed the proposed fee changes on February 1, 2022 (SR-BZX-2022-007). On February 7, 2022, the Exchange withdrew that filing and submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 23, 2022), available at https://markets.cboe.com/us/equities/market_statistics/.

Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0018 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also 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 an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Standard Liquidity Rebate

As stated above, the Exchange currently provides a standard rebate of \$0.0018 per share for liquidity adding orders (i.e., those yielding fee codes B,⁵ V,⁶ and Y⁷) in securities priced at or above \$1.00. Orders in securities priced below \$1.00 that add liquidity are free. The Exchange now proposes to decrease the current standard rebate of \$0.0018 per share to \$0.0016 per share for orders that add liquidity for securities priced at or above \$1.00. Orders that add liquidity in securities priced below \$1.00 would continue to be free. Although this proposed standard rebate for liquidity adding orders is lower than the current base rate for such orders, the proposed rebate is in line with similar rebates for liquidity adding orders in place on other exchanges.⁸

⁵ Orders yielding Fee Code "B" are displayed orders adding liquidity to BZX (Tape B).

⁶ Orders yielding Fee Code "V" are displayed orders adding liquidity to BZX (Tape A).

⁷ Orders yielding Fee Code "Y" are displayed orders adding liquidity to BZX (Tape C).

⁸ E.g., the Nasdaq base rebate ranges from \$0.0015 to \$0.00305 for liquidity adding orders in securities priced at or above \$1.00. See <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

Single MPID Investor Tiers

The Exchange also proposes to eliminate the Single MPID Investor Tier 3, which is currently described under footnote 4 of the fee schedule. Particularly, this tier applies to orders yielding fee code B, V, or Y and provides a \$0.0034 per share rebate to MPIDs that have a Step-Up ADAV⁹ as a percentage of TCV¹⁰ greater than or equal to 0.20% from September 2021 or MPIDs that have a Step-Up ADAV from September 2021 greater than or equal to 20 million shares. No Member has reached this tier in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such a tier.

Fee Schedule Clean Up

The Exchange proposes to update Footnote 19 of the Fee Schedule, which is appended to fee codes B, V, and Y, to reflect that orders that add liquidity to BZX for securities priced below \$1.00 are free instead of a rebate of \$0.00009 per share. The Exchange notes that it amended this rebate in May 2021 and that the “Free” rate is accurately reflected in the Standard Rates table.¹¹ However, the Exchange inadvertently at that time omitted updating corresponding Footnote 19 of the Fees Schedule and seeks to do so now.

Additionally, the Exchange notes that it removed the Total Volume tier from its Fee Code Schedule in December 2021,¹² but did not eliminate references to footnote 3 from fee codes B,

⁹ “Step-Up ADAV” means ADAV in the relevant baseline month subtracted from current ADAV.

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.

¹¹ See Securities Exchange Release No. 92013 (May 25, 2021) 86 FR 29312 (June 1, 2021) (SR-CboeBZX-2021-040).

¹² See Securities Exchange Release No. 34-93829 (December 20, 2021) 86 FR 73402 (December 20, 2021) [sic] (SRCboeBZX-2021-084).

V, and Y in Fee Code table. Accordingly, the Exchange now proposes to remove references to Footnote 3 from fee codes B, V, and Y, of the Fee Schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),¹⁴ 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 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, and thus is in the public interest.

In particular, the Exchange believes that the proposed amendment to reduce the standard liquidity adding rebate is reasonable because the proposed change represents a modest rebate decrease and Members will continue to receive a rebate on liquidity adding orders, albeit at a lower amount. The Exchange believes the proposed amendment is also equitable and not unfairly discriminatory because the proposed change is equally applicable to all Members of the Exchange. Additionally, the proposed rebate for liquidity adding orders is in-line with rebates offered at other exchanges for similar transactions.¹⁵

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4) and (5).

¹⁵ Supra note 7 [sic].

The Exchange believes the proposed amendment to remove Single MPID Investor Tier 3 is reasonable because no Member has achieved this tier in several months. Moreover, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed liquidity, including the enhanced rebates under the Single MPID Investor Tiers 1 and 2. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members.

Lastly, the Exchange believes that the proposed change to update Footnote 19 is reasonable, equitable and not unfairly discriminatory as it does not change the fees or rebates assessed by the Exchange, but rather updates the rate applicable to liquidity adding orders in securities priced below \$1.00 to accurately reflect the rate it adopted in the rule filing submitted in May 2021. As such, the proposed rule change is merely a clarification in the Fees Schedule which increases transparency in the Fees Schedule and reduces potential confusion regarding the appropriate rates for such orders. Similarly, the proposal to remove references to footnote three from fee codes B, V, and Y is reasonable, equitable and not unfairly discriminatory as it merely eliminates a reference to a reserved footnote.

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. Particularly, the proposed changes apply to all liquidity adding orders equally, and thus applies to all Members equally. Additionally, 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 purpose 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 order flow, including other equities exchanges, 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 18% of the market share.¹⁶ 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.”¹⁷ 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

¹⁶ Supra note 3 [sic].

¹⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

execution of order flow from broker dealers' ...".¹⁸ Accordingly, the Exchange does not believe its proposed fee changes 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 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 Act¹⁹ and paragraph (f) of Rule 19b-4²⁰ 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:

¹⁸ 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)).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f).

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-2022-008 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-2022-008. 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-2022-008 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.²¹

J. Matthew DeLesDernier
Assistant Secretary

²¹ 17 CFR 200.30-3(a)(12).