

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100203; File No. SR-CboeBZX-2024-037)

May 21, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.13 to Describe the Manner in Which the Exchange Processes Executions in Securities Priced Below \$1.00 Received from Away Trading Centers Priced in Fractional Pennies

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 May 10, 2024, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. 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”) proposes to amend Rule 11.13 to describe the manner in which the Exchange processes executions in securities priced below \$1.00 received from away Trading Centers priced in fractional pennies. 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 Rule 11.13 to describe the manner in which the Exchange processes executions in securities priced below \$1.00 received from away Trading Centers³ priced in fractional pennies.⁴ Currently, the Exchange does not accept or rank orders priced in fractional pennies in securities priced below \$1.00⁵ for orders posted to the BZX Book,⁶ but may receive executions priced in fractional pennies through its routing broker-dealer affiliate, Cboe Trading, Inc. (“Cboe Trading” or the “Routing Broker”). Today, when the Exchange’s Routing Broker receives an execution in a security priced below \$1.00 from certain away Trading Centers priced in

³ See Rule 2.11. A “Trading Center” means a securities exchange other than the Exchange, facilities of securities exchanges, automated trading systems, electronic communications networks, or other brokers or dealers.

⁴ For purposes of this filing, the term “fractional pennies” or “fractional penny” means an execution out to five decimal places or more (i.e., \$0.00001 or finer). The Exchange notes that it accepts and ranks orders in securities priced below \$1.00 out to four decimal places (\$0.0001). While quotations and executions in \$0.0001 increments are also known as fractional penny quotations (executions), the Exchange is limiting the use of the term “fractional penny” or “fractional pennies” within this proposal to executions out to five or more decimal places to categorize a specific issue with increments finer than \$0.0001.

⁵ See Rule 11.11(a)(2). “Bids, offers, orders of indications of interests in securities traded on the Exchange shall not be made in an increment smaller than \$0.0001 if those bids, offers or indications of interests are priced less than \$1.00 per share and the security is an NMS stock pursuant to Commission Rule 600(b)(46) and is trading on the Exchange.”

⁶ See Rule 1.5(e). The term “BZX Book” shall mean the System’s electronic file of orders.

fractional pennies, the Routing Broker truncates the execution price to four decimal places by eliminating any values beyond four decimal places priori [sic] to transmitting the execution price back to the Exchange.⁷ The Exchange now proposes that for each Exchange order in a security priced below \$1.00 that the Routing Broker routes to an away Trading Center, and for which it receives an execution in fractional pennies, that such execution will be rounded up or down in favor of the Exchange order – i.e., the Routing Broker will round down to the nearest \$0.0001 for all buy executions, and round up to the nearest \$0.0001 for all sell executions.

Pursuant to Rule 2.11, the Exchange relies on its Routing Broker to provide outbound routing services from the Exchange to a routing destination. Rule 2.11 also provides the authority to the Exchange or the Routing Broker to cancel orders on the Exchange’s equity securities platform when a technical or system issue occurs. In addition, Rule 2.11 also describes the operation of an error account for Cboe Trading. While Rule 2.11 speaks to the authority of the Routing Broker to provide outbound routing services, Rule 11.13(b) describes the manner in which orders are routed away from the Exchange to an away Trading Center. The Exchange proposes to add subparagraph (6) to Rule 11.13(b) to describe the order handling behavior of fractional penny executions on away Trading Centers.

Specifically, the Exchange proposes that in order to process executions which occur in securities priced below \$1.00 in fractional pennies on away Trading Centers, the Exchange’s Routing Broker will perform an adjustment to each fractional penny execution. In particular, for all buy executions in securities priced below \$1.00 received from an away Trading Center in fractional pennies, the Routing Broker will round down to the nearest \$0.0001. Additionally, for all sell

⁷ For example, if the Routing Broker receives an execution from an away Trading Center priced at \$0.50037, it truncates the price to \$0.5003 prior to transmitting the execution price back to the Exchange.

executions in securities priced below \$1.00 received from an away Trading Center in fractional pennies, the Routing Broker will round up to the nearest \$0.0001. The only exception to this rounding behavior will occur when a buy execution in securities priced below \$1.00 in fractional pennies received from an away Trading Center would result in the Routing Broker rounding down to a price of \$0.0000. In this instance, and this instance only, the Routing Broker will instead round up to the minimum price of \$0.0001 in order to comply with Rule 11.11(a)(2). The Routing Broker will afford the Exchange order (and ultimately, the User⁸) the most favorable execution price based on the fractional penny execution received by the Routing Broker from the away market, save for the limited scenario when the Routing Broker must round a buy order up to a price of \$0.0001 in order to meet the Exchange's minimum price requirement. Once the Routing Broker has completed its adjustment, it will transmit the order back to the Exchange.

The Exchange's proposal is based on a similar proposal from NYSE that described how its routing broker would process orders received from an away market that were executed in odd-lots or in sub-pennies.⁹ While the Exchange's proposal is similar to the NYSE Routing Broker Filing, there are important distinctions as described below. First, the NYSE Routing Broker Filing is a broad proposal that introduces NYSE's routing broker and provides a detailed description of the routing broker's operation, and the Exchange's proposal is limited to describing only the manner in which the Routing Broker processes executions received from an away Trading Center that occur in fractional pennies, as the Exchange's Routing Broker has been operating since the Exchange's approval in 2008.¹⁰ Next, the Exchange's proposal differs from the NYSE Routing Broker Filing in

⁸ See Rule 1.5(cc). The term "User" shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

⁹ See Securities Exchange Act Release No. 55590 (April 5, 2007), 72 FR 18707 (April 13, 2007), SR-NYSE-2007-29 ("NYSE Routing Broker Filing").

¹⁰ See Securities Exchange Act Release No. 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008), File

that the Exchange seeks to describe order handling behavior by its Routing Broker when executions on an away Trading Center occur in fractional pennies, whereas the NYSE Routing Broker Filing describes order handling behavior for executions received by its routing broker occurring in odd-lots or sub-pennies. While there is a distinction between the Exchange's proposal being focused on fractional pennies for securities priced below \$1.00 and NYSE's proposal applying to sub-pennies in securities priced at or above \$1.00, the order handling behavior by both NYSE's routing broker and the Exchange's Routing Broker is nearly identical as both round up (down) to provide the most favorable execution price in a permissible pricing increment based on the execution received from the away Trading Center. In the NYSE Routing Broker Filing, its routing broker rounds up (for sell orders) or down (for buy orders) to the nearest penny, providing the Exchange order the most favorable execution price based on the sub-penny execution received by the routing broker from the away market center. The Exchange's proposal indicates that the Routing Broker will round up (down) to the nearest \$0.0001, providing the Exchange order the most favorable execution price based on the fractional penny execution received by the Routing Broker from the away Trading Center. Additionally, while the NYSE Routing Broker Filing *describes* the order handling behavior of its routing broker, this description was not actually added as rule text to the NYSE rulebook¹¹ and the Exchange is seeking to codify its Routing Broker's order handling behavior when executions are received in fractional pennies.

This service provided by the Routing Broker with regard to fractional penny executions is not intended to operate as a means to generate revenue. While the Routing Broker does not

No. 10-182 ("BATS Exchange Approval Order").

¹¹ See Securities Exchange Act Release No. 64729 (June 23, 2011), 76 FR 38232 (June 29, 2011), SR-NYSE-2011-24 ("NYSE Inbound Routing Filing"). Footnote 11 of the NYSE Inbound Routing Filing states "[n]o rule text was added to the NYSE Rules to describe these functions[.]" in reference to a statement that the routing broker was previously engaged in certain odd-lot and sub-penny transactions as part of its routing function for the exchange.

anticipate accruing any positions as a result of the adjustments made to executions in securities priced below \$1.00 received from away Trading Centers in fractional pennies, the Routing Broker will liquidate positions assumed as a result of the services provided to the Exchange. To that end, it is the intent of the Routing Broker to be flat in all positions at the end of each trading day.¹² The Routing Broker incorporates an automated system to immediately assist in the liquidation (acquisition) for any residual long (short) positions. To mitigate financial risk¹³ to the Routing Broker, registered trading personnel of the Routing Broker may be required to manually assist, as soon as practicable, in the liquidation (acquisition) of such positions, when due to the nature of the security (e.g., high-priced securities that trade with a wide spread) and its trading pattern or volatile market conditions liquidation (acquisition) is not immediately possible.

The Exchange has included the following examples to demonstrate the proposed order handling behavior.

Example 1

Firm A enters an order on the Exchange to buy 100 shares of ABC at \$0.5008. The Exchange's best offer is \$0.5007. Trading Center 1 is displaying a best offer at \$0.5006. Trading Center 1 also has the ability to execute trades in fractional pennies. The System¹⁴ transmits Firm A's order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange to Trading Center 1. The Routing Broker receives a fill of 100 shares at \$0.50058 due to price improvement received at

¹² Absent any unusual market conditions or timing of such trades (for example, the execution of the order at 15:59:59 (it is intended that the Routing Broker will be flat in all positions at the end of each trading day.

¹³ Any and all losses incurred during the facilitation of fractional penny executions will be assumed by the Routing Broker as part of the routing service provided.

¹⁴ See Rule 1.5(aa). The term "System" shall mean 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.

Trading Center 1. The Routing Broker will sell 100 shares to Firm A at \$0.5005 and uses the fill of 100 shares at \$0.50058 to offset the position. The Routing Broker will incur a total loss of \$0.008, or \$0.00008 per share.

Example 2

Firm A enters an order on the Exchange to sell 100 shares of ABC at \$0.5004. The Exchange's best bid is \$0.5005. Trading Center 1 is displaying a best bid at \$0.5006. Trading Center 1 also has the ability to execute trades in fractional pennies. The System transmits Firm A's order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange to Trading Center 1. The Routing Broker receives a fill of 100 shares at \$0.50068 due to price improvement received at Trading Center 1. The Routing Broker will buy 100 shares from Firm A at \$0.5007 and uses the fill of 100 shares at \$0.50068 to offset the position. The Routing Broker will incur a total loss of \$0.002, or \$0.00002 per share.

Example 3

Firm A enters an order on the Exchange to buy 100 shares of ABC at \$0.0001. The Exchange's best offer is \$0.0003. Trading Center 1 is displaying a best offer at \$0.0001. Trading Center 1 also has the ability to execute trades in fractional pennies. The System transmits Firm A's order with order handling instructions to the Routing Broker. The Routing Broker then transmits the order with the order handling instructions received from the Exchange to Trading Center 1. The Routing Broker receives a fill of 100 shares at \$0.00008 due to price improvement received at Trading Center 1. The Routing Broker will sell 100 shares to Firm A at \$0.0001 and uses the fill of

100 shares at \$0.00008 to offset the position. The Routing Broker will have a total gain of \$0.002, or \$0.00002 per share.¹⁵

The Routing Broker will not engage in any business for the Exchange other than its outbound and inbound routing functions as detailed in Rules 2.11 and 2.12 and in the manner described above. Users are not required to utilize the Routing Broker when submitting orders to the Exchange. In the event a User does not wish for its order to be routed and potentially subject to the order handling behavior described above, it must enter an immediate-or-cancel (“IOC”) or any such other order type available on the Exchange that is not eligible for routing. All bids and offers entered on the Exchange that are routed away via the Routing Broker which result in an execution shall be binding on the User that entered such bid or offer.

The Exchange believes that the above proposal detailing the order handling behavior for executions in securities priced below \$1.00 received from an away Trading Center in fractional pennies will provide Users with the best possible outcome in situations where the Exchange is unable to process an execution in fractional pennies due to System limitations.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

¹⁵ The Exchange notes that Example 3 is unlikely to happen as the minimum price increment is \$0.0001 but includes this example to demonstrate potential order handling behavior. See 17 CFR 242.612(b).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposal promotes just and equitable principles of trade by providing additional transparency into how the Exchange's Routing Broker processes executions in securities priced below \$1.00 received in fractional pennies from away Trading Centers. Additionally, the Exchange believes that the Routing Broker's favorable price adjustment in favor of the User submitting the order promotes just and equitable principles of trade as it is designed to provide Users with the best possible outcome when their orders are adjusted due to System limitations on the Exchange. While the Routing Broker will be incurring a loss on each transaction except for in the limited scenario described in Example 3 above, the end result serves to protect investors and the public interest by providing a price more favorable to Users than the execution price received on the away Trading Center. The Exchange believes that the limited scenario presented in Example 3 above promotes just and equitable principles of trade because rather than providing an execution to the Exchange (and therefore the User) at a price of \$0.0000, the Routing Broker will instead round up to a price of \$0.0001, which is the minimum execution price supported by the Exchange. While this will result in a minimal profit for the Routing Broker and an inferior execution price than what is provided by the away Trading

¹⁸ Id.

Center, the Exchange believes that the benefit of the Exchange (and User) ultimately receiving a buy execution at \$0.0001 outweighs any minimal profit that the Routing Broker may receive and any minimal loss that the User experiences as a result of the rounding adjustment. Further, the proposal does not result in unfair discrimination as it applies to all executions received by the Routing Broker in securities priced below \$1.00 that are priced in fractional pennies. Should a User not wish for its order to be subject to the proposed fractional penny adjustment described above, it is free to select a different order type that does not route to an away Trading Center.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the proposed order handling behavior by the Routing Broker will apply to all orders routed away equally, in that any order received by the Routing Broker from an away Trading Center in fractional pennies will be adjusted down (up) to the benefit of the User before being sent back to the Exchange. The Exchange notes that use of the Routing Broker is not mandatory. If a User does not wish to have its order subjected to the proposed order handling behavior it is free to choose a different order type that is not eligible for routing to away Trading Centers. In addition, the proposed rule change will not impose any burden on intermarket competition as it is not being introduced to address a competitive issue, but rather to better describe order handling behavior by the Exchange's Routing Broker.

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

Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Exchange states that waiver of the operative delay would permit the Exchange's Routing Broker to immediately implement the order handling behavior described in the proposal, which would benefit Users who submit a routable order to the Exchange and receive an execution on an away Trading Center in fractional pennies. The Exchange further states the proposed rule change does not present any new or novel issues, as at least one other exchange indicated that its routing broker performed similar rounding behavior for orders received in odd-

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

lot or sub-penny increments that were filled on away market centers and were not compatible with existing exchange system behavior.²³ For these reasons, and because the proposal does not raise any new or novel issues, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁴

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 shall institute proceedings under Section 19(b)(2)(B)²⁵ 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:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-037 on the subject line.

²³ See *supra* note 9.

²⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁵ 15 U.S.C. 78s(b)(2)(B).

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-2024-037. This file number should be included on the subject line if email 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright

protection. All submissions should refer to file number SR-CboeBZX-2024-037 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁶

Sherry R. Haywood,
Assistant Secretary.

²⁶ 17 CFR 200.30-3(a)(12), (59).