

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-100587; File No. SR-CboeBZX-2024-068)

July 25, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fees Schedule

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 July 9, 2024, 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”) proposes to amend its Fees 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 Fees Schedule.<sup>3</sup>

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 17 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 13% of the market share.<sup>4</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

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<sup>3</sup> The Exchange initially filed the proposed fee changes on July 1, 2024 (SR-CboeBZX-2024-063). On July 9, 2024, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Global Markets U.S. Options Market Volume Summary by Month (June 27, 2024), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

The Exchange’s fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides a rebate of \$0.25 per contract for Firm<sup>5</sup>, Broker Dealer<sup>6</sup> and Joint Back Office<sup>7</sup> (“Firm/BD/JBO”) orders that add liquidity in Penny Securities, yielding fee code PF. 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.<sup>8</sup> 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.

First, the Exchange proposes to increase the standard rebate for Firm/BD/JBO orders (i.e., yield fee code PF) that add liquidity in Penny Securities, from \$0.25 to \$0.26.<sup>9</sup>

Second, the Exchange proposes to update the Firm, Broker Dealer, and Joint Back Office Penny Add Volume Tiers (i.e., applicable to orders yielding fee code PF) set forth in Footnote 2. The Exchange currently provides opportunities for rebates per contract to add liquidity in Penny Securities as follows:

Tier	Rebate Per Contract to Add	Required Criteria
Tier 1	(\$0.38)	Member has an ADAV* in Firm/BD/JBO orders $\geq$ 0.20% of average OCV**
Tier 2	(\$0.46)	(1) Member has an ADAV in Away MM/Firm/BD/JBO orders

<sup>5</sup> “Firm” applies to any order for the proprietary account of an OCC clearing member.

<sup>6</sup> “Broker Dealer” applies to any order for the account of a broker dealer, including a foreign broker dealer.

<sup>7</sup> “Joint Back Office” applies to any order for a joint back office account.

<sup>8</sup> As part of the proposed rule change, the Exchange proposes a clarifying change to remove the duplicative reference to a rebate of \$0.39 for fee code PM in the Standard Rates table.

<sup>9</sup> In connection with the proposed fee changes, the Exchange also proposes to update the corresponding listed rebate of \$0.25 for fee codes PF in the Fee Codes and Associated Fees table to the proposed new rebate of \$0.26.

		$\geq 1.05\%$ of average OCV; and (2) Member has an ADV*** $\geq 1.95\%$ of average OCV
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\*"ADAV" means average daily added volume calculated as the number of contracts added.

\*\*"OCC Customer Volume" or "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

\*\*\*"ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

The Exchange proposes to amend these tiers as follows:

- modify Tier 1 to require the Member to have an ADAV in Firm/BD/JBO orders greater than or equal to 15,000 contracts and an ADAV in Customer orders greater than or equal to 0.20% of average OCV, to qualify for the rebate; and

modify Tier 2 to reduce the rebate from \$0.46 to \$0.42 per contract<sup>10</sup> and require the Member to have an ADAV in Firm/BD/JBO orders greater than or equal to 30,000 contracts and an ADAV in Customer orders greater than or equal to 0.20% of average OCV, to qualify for the rebate.

## 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.<sup>11</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>12</sup> requirements

<sup>10</sup> In connection with the proposed fee changes, the Exchange also proposes to update the corresponding listed rebate of \$0.46 for fee codes PF in the Fee Codes and Associated Fees table to the proposed new rebate of \$0.42.

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

that the rules of an exchange be 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 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)<sup>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>14</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As described above, 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 change reflects 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. Additionally, competing exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon similarly situated members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

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<sup>13</sup> Id.

<sup>14</sup> 15 U.S.C. 78f(b)(4).

The Exchange believes the proposed rule change to increase the standard rebate for Firm/BD/JBO orders that add liquidity in Penny Securities is reasonable because it is a modest increase in this rebate rate for these orders and it continues to be in line with the standard rebate for orders of other market participants that remove liquidity in Penny Securities on the Exchange.<sup>15</sup> Additionally, the proposed rebate is in line with rebates for similar transactions at other exchanges.<sup>16</sup> The Exchange believes the proposed change is equitable and not unfairly discriminatory because it applies uniformly to all Members and, as previously noted, the increased rebate is in line with the standard rebate for orders submitted for other market participants that add liquidity in Penny Securities on the Exchange.

The Exchange believes the proposed changes to the Firm/BD/JBO Penny Add Volume Tiers are reasonable because they continue to provide opportunities for Members to receive higher rebates by providing for incrementally increasing volume-based criteria they can reach for. The Exchange believes the tiers, as modified, continue to serve as a reasonable means to encourage Members to increase their liquidity on the Exchange, particularly in connection with additional Firm/BD/JBO order flow to the Exchange in order to benefit from the proposed enhanced rebates.

The Exchange believes the proposed criteria remain commensurate with the corresponding enhanced rebates, including as amended for Tier 2. The Exchange believes the revised criteria will continue to encourage Members to send additional Firm/BD/JBO orders to the Exchange. Greater remove volume order flow may increase transactions on the Exchange,

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<sup>15</sup> As set forth in the Fees Schedule, the standard rebate for orders that add liquidity in Penny Securities is between \$0.25 and \$0.29 for Professional, Customer, Market Maker, and Away MM orders.

<sup>16</sup> See, e.g., MIAX Emerald Options Exchange Fee Schedule, Transaction Fees, which provides that Firm Proprietary and Broker Dealer orders that add liquidity are provided a rebate of \$0.25 per contract in Penny Classes. See also MEMX Options Fee Schedule, which provides Firms and Broker Dealers that add liquidity are provided a rebate of \$0.45 per contract in Penny Securities.

which the Exchange believes incentivizes liquidity providers to submit additional liquidity and execution opportunities. An overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality for all investors.

Further, the Exchange believes the proposed reduced rebate offered under revised Firm/BD/JBO Penny Add Volume Tier 2 is reasonable because Members are still eligible to receive a rebate for meeting the corresponding criteria, albeit at a lower amount than before. While Firm/BD/JBO Penny Add Volume Tier 2, as proposed, will provide a lower rebate than that currently offered (from \$0.46 to \$0.42), the Exchange still believes that the changes are reasonable as the tier, even as amended, will continue to incentivize Members to send additional Firm/BD/JBO orders to the Exchange. As noted above, an overall increase in add activity may provide for deeper, more liquid markets and execution opportunities at improved prices, which ultimately offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality for all investors. Moreover, the Exchange is not required to maintain these tiers nor provide rebates. The Exchange believes the proposed changes to the rebates offered under these tiers still remain commensurate with the corresponding criteria under the respective tiers.

The Exchange believes the proposed change is also equitable and not unfairly discriminatory because it applies uniformly to all Members, who will have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate for each tier if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for the proposed rebates. While the Exchange has no way of predicting with

certainty how the proposed changes will impact Member activity, based on trading activity from the prior months, the Exchange anticipates that up to two Members will achieve Tier 1 and up to two Members will achieve Tier 2. Additionally, all Members are able to increase their Firm/BD/JBO order flow to attempt to achieve these tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

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. Particularly, the Exchange believes the proposal to increase the standard rebate for Firm/BD/JBO orders that add liquidity in Penny Securities will not impose any burden on intramarket competition because it will apply uniformly to all Members. All Members that submit orders yielding fee code PF will receive this same rebate. The Exchange believes the proposal to amend the Firm/BD/JBO Penny Add Volume Tiers will also not impose any burden on intramarket competition, as the changes will also apply to all Members. All Members will continue to have an opportunity to receive rebates under various tiers in the program. The Firm/BD/JBO Penny Add Volume Tiers are generally designed to increase the competitiveness of BZX and incentivize participants to increase their order flow on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. An overall increase in add activity may provide for deeper, more liquid markets and execution opportunities at improved prices. Furthermore, greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.



The Exchange does not believe that the proposed changes represent a significant departure from pricing currently offered by the Exchange. Members 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 changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes 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 16 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 13% of the market share.<sup>17</sup> Therefore, no exchange possesses significant pricing power in the execution of option 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."<sup>18</sup> The fact that this market is competitive has also long been

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<sup>17</sup> See supra note 4.

<sup>18</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

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 execution of order flow from broker dealers’ ...”.<sup>19</sup> Accordingly, the Exchange does not believe its proposed fee change 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 Act<sup>20</sup> and paragraph (f) of Rule 19b-4<sup>21</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>19</sup> *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)).

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</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-2024-068 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-2024-068. 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 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-2024-068 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.<sup>22</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>22</sup> 17 CFR 200.30-3(a)(12).