

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99507; File No. SR-CboeBZX-2024-011)

February 9, 2024

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

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 February 1, 2024, Cboe BZX Exchange, Inc. (the “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”) 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 applicable to its equities trading platform (“BZX Equities”) by 1) modifying the rate associated with fee code RP; 2) modifying the criteria of Add Volume Tier 3; and 3) removing certain tiers from the Fee Schedule. The Exchange proposes to implement these changes effective February 1, 2024.

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,³ no single registered equities exchange has more than 14% 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 rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 23, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁴ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁵ 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.

Fee Code RP

The Exchange currently offers fee code RP, which is appended to non-displayed orders that add liquidity to the Exchange using a Supplemental Peg Order.⁶ Currently, orders appended with fee code RP are provided a rebate of \$0.00170 per share in securities priced at or above \$1.00. For securities appended with fee code RP priced below \$1.00 the Exchange does not provide a rebate or assess a fee. Now the Exchange proposes to lower the rebate amount associated with fee code RP from \$0.00170 per share to \$0.00080 per share in securities priced at or above \$1.00. The Exchange does not propose to change its pricing for orders appended with fee code RP in securities priced below \$1.00. The Exchange notes that this change is being made

⁴ See BZX Equities Fee Schedule, Standard Rates.

⁵ Id.

⁶ See Rule 11.9(c)(18). A “Supplemental Peg Order” is a non-displayed limit order that posts to the BZX Book and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.

in order to align the rebate associated with fee code RP with other fee codes on the Exchange that provide a rebate for non-displayed orders.⁷

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange offers various Add/Remove Volume Tiers. In particular, the Exchange offers eight Add Volume Tiers that provide enhanced rebates for orders yielding fee codes B,⁸ V⁹ and Y¹⁰ where a Member reaches certain add volume-based criteria. First, the Exchange proposes to modify the criteria of Add Volume Tier 3. The current criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV¹¹ as a percentage of TCV¹² $\geq 0.25\%$ or Member has an ADAV $\geq 25,000,000$.

The proposed criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV $\geq 0.30\%$ or Member has an ADAV $\geq 30,000,000$.

⁷ See e.g., BZX Equities Fee Schedule, Fee Codes HB, HV, and HY. Each of the aforementioned fee codes provides a rebate of \$0.00080 per share in securities priced at or above \$1.00 for non-displayed orders that add liquidity in Tapes B, A, and C securities, respectively.

⁸ Fee code B is appended to displayed orders that add liquidity to BZX in Tape B securities.

⁹ Fee code V is appended to displayed orders that add liquidity to BZX in Tape A securities.

¹⁰ Fee code Y is appended to displayed orders that add liquidity to BZX in Tape C securities.

¹¹ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹² “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.

The proposed modification to Add Volume Tier 3 represents a modest increase in difficulty to achieve the applicable tier threshold while maintaining the existing rebate. The Exchange believes that the proposed criteria continues to be commensurate with the rebate received and will encourage Members to grow their volume on the Exchange. Increased volume on the Exchange contributes to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

In addition to the proposed modification to Add Volume Tier 3, the Exchange now proposes to delete Add Volume Tier 8 as the Exchange does not wish to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Additionally, under footnote 1, the Exchange offers five Non-Displayed Add Volume Tiers which provide enhanced rebates for orders yielding fee codes HB,¹³ HV,¹⁴ or HY¹⁵ where a Member reaches certain add volume-based criteria. The Exchange now proposes to delete Non-Displayed Add Volume Tier 6 as the Exchange does not wish to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

¹³ Fee code HB is appended to non-displayed orders that add liquidity to BZX in Tape B securities.

¹⁴ Fee code HV is appended to non-displayed orders that add liquidity to BZX in Tape A securities.

¹⁵ Fee code HY is appended to non-displayed orders that add liquidity to BZX in Tape C securities.

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 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 as well as Section 6(b)(4)¹⁹ 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.

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 Exchange believes that its proposal to modify Add Volume Tier 3 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, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Id.

¹⁹ 15 U.S.C. 78f(b)(4)

exchanges,²⁰ including the Exchange,²¹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates and fees that apply based upon 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.

In particular, the Exchange believes its proposal to modify Add Volume Tier 3 is reasonable because the revised tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes the proposed modification to Add Volume Tier 3 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes to Add Volume Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. Further, the Exchange believes its proposed change to fee code RP is reasonable as this change does not represent a significant departure from the Exchange's general pricing

²⁰ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²¹ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

structure. The Exchange notes that the proposed change to fee code RP are intended to align the rebate associated with Supplemental Peg Orders with existing rebates offered by the Exchange for other non-displayed orders adding liquidity to the Exchange.²² The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members continue to be eligible for the proposed Add Volume Tier 3 and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate 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 this proposed rule change would definitely result in any Members qualifying for proposed Add Volume Tier 3. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 3. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes that its proposal to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 is reasonable because the Exchange is not required to maintain these tiers nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate the tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not

²² Supra note 7.

required to offer or maintain. Furthermore, the proposed rule change to eliminate the tiers enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed modification to Add Volume Tier 3 and the proposed lower rebate associated with fee code RP will apply to all Members equally in that all Members are eligible for the modified tier and lower rebate, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of BZX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading

opportunities, and pricing transparency benefits 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.

Additionally, the Exchange believes the proposed elimination of Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed change to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not 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 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 14% of the market share.²³ 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

²³ Supra note 3.

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.”²⁴ 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 execution of order flow from broker dealers’”²⁵ 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 Act²⁶ and paragraph (f) of Rule 19b-4²⁷ 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,

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁵ *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)).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-011 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-2024-011. 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-2024-011 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.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).