Item 1. **Text of the Proposed Rule Change**

(a) Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") proposes to amend its Fee Schedule by modifying footnote 14 to include fee code AN and make continuous book executions that occur in the Opening and Closing Auctions free for Lead Market Makers. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. **Procedures of the Self-Regulatory Organization**

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on January 30, 2025.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Courtney Smith, Senior Counsel, (913) 222-4652, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

Item 3. **Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend its Fee Schedule by modifying certain Opening and Closing Auction fees applicable to Lead Market Makers ("LMMs").[1] Currently, under footnote 14, the Exchange offers pricing applicable to LMMs in BZX-listed securities. Under subparagraph (D) of footnote 14, LMMs in BZX-listed securities currently transact for free in the Closing Auction in their LMM securities in orders

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1 The Exchange initially proposed to amend its Fee Schedule on February 3, 2025 (SR-CboeBZX-2025-015). On February 12, 2025, the Exchange withdrew that filing and submitted this proposal.

appended with fee codes AC[2] and AL.[3] Currently, only an LMM's Eligible Auction Orders[4] such as Limit-On-Close,[5] Late-Limit-On-Close,[6] and Market-On-Close,[7] orders may transact for free in the Closing Auction under fee codes AC and AL. The Exchange proposes to amend footnote 14 to permit an LMM's continuous book orders that execute during either the Opening and/or Closing Auctions to transact for free. In order to accomplish this change, the Exchange proposes to modify subparagraph (D) to rename the subparagraph "LMM Auction Rates". Additionally, the Exchange proposes to include fee code AN[8] as an applicable fee code of subparagraph (D). Further, the Exchange proposes to revise the text of subparagraph (D) to include references to the Opening and Closing Auctions. The current text of subparagraph (D) is as follows:

- LMMs in BZX-listed securities will transact for free in the Closing Auction in their LMM Securities.

The Exchange proposes to modify the text of subparagraph (D) to state:

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2 Fee code AC is appended to Closing Auction orders in BZX listed securities.

3 Fee code AL is appended to Late-Limit-On-Close orders that execute in the Closing Auction in BZX listed securities.

4 See Rule 11.23(a)(8). An Eligible Auction Order includes any Market-On-Open, Limit-On-Open, Late-Limit-On-Open, Market-On-Close, Limit-On-Close, or Late-Limit-On-Close order that is entered in compliance with its respective cutoff for an Opening or Closing Auction and any Regular Hours Only order prior to the Opening Auction.

5 See Rule 11.23(a)(13). A Limit-On-Close ("LOC") order is a BZX limit order that is designated for execution only in the Closing Auction.

6 See Rule 11.23(a)(11). A Late-Limit-On-Close ("LLOC") order is a BZX limit order that is designated for execution only in the Closing Auction. An LLOC will have its limit price adjusted to be equal with the NBB or NBO in the event that the LLOC bid or offer is entered with a more aggressive limit price than the NBB or NBO at the time of entry, and will be re-priced to a more aggressive price should the NBB or NBO become more aggressive, so long as the more aggressive price is not priced more aggressive than the original limit price of the LLOC order.

7 See Rule 11.23(a)(15). A Market-On-Close order ("MOC") is a BZX market order that is designated for execution only in the Closing Auction or Cboe Market Close.

8 Fee code AN is appended to continuous book orders that are executed in the Opening or Closing Auction in BZX listed securities.

- LMMs in BZX-listed securities will transact for free in the Closing Auction in their LMM Securities, including continuous book orders executing during the Closing Auction.

The Exchange also proposes to add the following text to subparagraph (D):

- LMMs in BZX-listed securities will transact for free in continuous book orders executing during the Opening Auction in their LMM securities.

These changes will enable LMMs to have their continuous book orders transact for free in either the Opening and/or Closing Auctions. As LMMs currently transact for free in the Closing Auction with Eligible Auction Orders identified with fee codes AC and AL, the Exchange believes that extending the ability to transact for free in the Closing Auction to continuous book orders will incentivize liquidity provision on the continuous book as LMMs will no longer be subject to a fee for an execution in the Closing Auction as a consequence of its continuous book order not being filled prior to the Closing Auction. Additionally, extending the ability of an LMM to transact for free in its continuous book orders that execute during the Opening Auction may encourage LMMs to submit continuous book orders prior to market open, as the LMM will no longer be assessed a fee for transacting in the Opening Auction. Incentivizing an increase in liquidity during the Opening and Closing Auctions provides for overall enhanced price discovery and price improvement opportunities on the Exchange. As such, increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

(b) 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"),[9] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[10] 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 offers a competitive pricing structure to its LMMs in order to incentivize liquidity provision in its BZX-listed products and the proposed change to permit continuous book orders to transact for free in the Opening and Closing Auctions seeks to provide LMMs with an additional incentive to submit continuous book orders in exchange for possibly receiving an execution during the Opening and/or Closing Auctions for which it would otherwise incur a fee.

The Exchange believes that its proposal to amend footnote 14, subparagraph (D) to make an LMM's continuous book orders that execute during either the Opening and/or Closing Auctions free is reasonable because the proposed fees remain consistent with pricing offered by the Exchange to LMMs for Closing Auction orders pursuant to fee codes AC and AL. The proposed change also remains competitive with the fee for LMM orders in the opening or closing auctions on the Exchange's two competitors, NYSE Arca ("Arca") and Nasdaq Stock Market, LLC ("Nasdaq").

Specifically, Arca does not assess a fee for an LMM's orders in the closing auction.[11] However, Arca charges a fee of $0.0006 per share for executions in an auction,

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9 15 U.S.C. 78f.

10 15 U.S.C. 78f(b)(4) and (5).

11 See Arca Fee Schedule, Fees and Charges, Lead Market Maker ("LMM") Transaction Fees and Credits, II. LMM Base Fee and Credits per Share, available at: https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/NYSE_Arca_Marketplace_Fees.pdf. .

other than "auction orders".[12] Additionally, Nasdaq charges a fee of $0.0011[13] per share for imbalance only orders and Continuous Book[14] orders that participate in Nasdaq's opening cross. Nasdaq does not discount opening or closing auction fees for its Designated Liquidity Providers (DLPs). The Exchange is proposing that an LMM's continuous book orders that execute during either the Opening Auction or Closing Auction will not be assessed a fee, which is less than what Nasdaq assesses its DLPs and equal to (for continuous book orders executing during the Closing Auction) and less than (for continuous book orders executing during the Opening Auction) the fees assessed to LMMs by Arca.

Furthermore, the marketplace for listings is extremely competitive and there are several other national securities exchanges that offer 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 and Nasdaq and the Exchange believes that its proposed decrease in fees assessed to an LMM's continuous book orders that execute in either the Opening and/or Closing Auction is commensurate with the competitive forces discussed above.

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12 Id at pg. 3, Section IV. Other Standard Rates for Securities with a Per Share Price $1.00 or Above.

13 Id.

14 For the purposes of the NASDAQ Opening Cross, Nasdaq's fee schedule defines a Continuous Book Order as "all quotes and extended hours orders (X) orders eligible to participate in the cross." Id.

The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because registration and participation in the LMM program continues to be available equally on an optional basis to all Members. The Exchange's listings business operates in a highly-competitive market in which market participants, which includes both issues of securities and LMMs, can readily transfer their listings or opt not to participate, respectively, if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. With the proposed change to permit LMMs to transact for free in its continuous book orders that execute during the Opening and/or Closing Auctions, the Exchange believes that it will encourage the submission of continuous book orders, which promotes an overall increase in activity that would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, and promote market transparency that would in turn improve market quality in all BZX-listed products.

Item 4. <u>Self-Regulatory Organization's Statement on Burden on Competition</u>

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket 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 also does not believe the proposed fees would burden intramarket competition as they would be assessed to all LMMs who participate in Exchange auctions uniformly.

Item 5. 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.

Item 6. Extension of Time Period for Commission Action

Not applicable.

Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b-4(f)(2)[16] thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the "Commission"). At any time within 60 days of the filing of this 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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15 15 U.S.C. 78s(b)(3)(A).

16 17 CFR 240.19b-4(f)(2).

(c) Not applicable.

(d) Not applicable.

Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.