

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86419; File No. SR-CboeBZX-2019-066)

July 19, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Update Rule 16.1 to Include the Definition of Capacity, as well as Amend its Fee Schedule to Reflect this Update

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 July 17, 2019, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ 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 Options”) proposes to update Rule 16.1 to include the definition of capacity, as well as amend its fee schedule to reflect this update. 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.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

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 add “capacity” as a defined term under Rule 16.1 (Definitions). The proposed change intends to codify the definition of capacity in its rules, which is currently referenced in its technical specifications⁵ and in certain rules⁶. This proposed change is also a harmonizing change intended to conform to the capacity definition under the rules of its affiliated exchange, Cboe C2 Exchange, Inc. (“C2”). The Exchange also proposes to update a term under Rule 20.7(Audit Trail) to reflect the proposed capacity definition. In addition to this, the Exchange proposes to conform certain definitions under its fee schedule to this proposed definition.

Currently, the System⁷ allows for a User to mark its order with various capacity codes which correspond to the capacity of the User (i.e. a customer, a Market Maker, etc.)⁸, and, pursuant to

⁵ See Cboe Options Exchanges Binary Order Entry Specification, available at http://cdn.batstrading.com/resources/membership/US_Options_BOE_Specification.pdf.

⁶ See Rule 18.2, Rule 20.7(b), and Rule 21.10.

⁷ The automated trading system used by BZX Options for the trading of options contracts. See Rule 16.1.

⁸ See Cboe Options Exchanges Binary Order Entry Specification, available at http://cdn.batstrading.com/resources/membership/US_Options_BOE_Specification.pdf.

current Exchange Rules, Users are required to submit orders with the proper capacity identification.⁹ The current Exchange Rules, however, do not provide for a specific definition of the capacity in which a User may submit an order nor for the corresponding codes for different User capacity types. Additionally, the current fee schedule provides that a Member's transaction is assigned a fee code and defines the various types (i.e. capacity type) of Members to which the corresponding fee codes are assigned. Specifically, the Member type definitions apply to any transaction identified by such Member. For example, "Market Maker" applies to any transaction identified by a Member for clearing in the Market Maker range at the OCC, where such Member is registered with the Exchange as a Market Maker.

The Exchange now proposes to amend Rule 16.1 to codify the definition of "capacity". The Exchange proposes to define "capacity" to mean the capacity in which a User submits an order, which the User specifies by applying the corresponding code to the order. The proposed corresponding codes and capacity types include: "B" to an order for the account of a broker dealer, including a foreign broker dealer; "C" to an order for the account of a Priority Customer; "F" to an order for the proprietary account of an OCC clearing member firm; "J" to an order for a joint back office account; "M" to an order for the account of a registered Market Maker; "N" to an order for the account of a market maker, i.e. an Away Market Maker; and "U" to an order for the account of a Professional.¹⁰

This definition is substantially similar to that of the definition under C2 Rule 1.1. The Exchange notes only slight differences between its proposed rule and that of its affiliated exchange,

⁹ See Rule 20.7.

¹⁰ See Rule 16.1(a)(47) (proposed Rule 16.1). A Professional means any person or entity that is not a broker or dealer in securities and places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). All Professional orders shall be appropriately marked by Options Members.

C2. First, the Exchange provides that capacity code “C” applies to orders for the account of a Priority Customer, whereas capacity code “C” under C2 Rule 1.1 applies to orders for the account of Public Customer. This difference accounts for the fact that C2 does not have a defined term for Priority Customer, which pursuant to Rule 16.1, means any person or entity that is not a broker or dealer in securities or a Professional. The Exchange believes that incorporating this term, as opposed to Public Customer, maintains consistency with the Exchange’s fee schedule, which already excludes Professionals from the definition of the term Customer for purposes of pricing on the Exchange, and provides that Professional capacity types are to be separately marked as such. Second, the Exchange provides that capacity code “N” is assigned to an order for the account of a market maker on another options exchange, and is otherwise known as an Away Market Maker. C2 does not provide in its definition that this capacity type is otherwise known as an Away Market Maker. The Exchange’s fee schedule currently defines Away Market Maker to mean the same as this proposed rule definition. Therefore, the Exchange believes that incorporating this language is a non-substantive addition that does not alter the capacity type definition attached to capacity code “N” in any way, but rather maintains consistency with the Exchange’s fee schedule. The Exchange also notes that it does not add capacity code “L” like that of C2 for non-trading permit holder affiliates as this capacity code is only applicable to participants on C2.¹¹

In addition to this, the proposed rule change alphabetizes the defined terms in Rule 16.1 and removes the paragraph lettering to conform to the format of C2 Rule 1.1 for its definitions.

The Exchange also proposes to update Rule 20.7 (Audit Trail) to reflect the proposed capacity definition under Rule 16.1(a). Specifically, current Rule 20.7(b) provides that order records relating to BZX Options must contain certain information, including Member capacity pursuant to

¹¹ See supra note 5.

subparagraph (b)(6). The Exchange now proposes to update subparagraph (b)(6) to User capacity, which is in line with the proposed capacity definition under proposed Rule 16.1.

The Exchange also proposes to update the capacity type definitions of “Away Market Maker”, “Customer”, “Firm”, “Joint Back Office”, “Market Maker” and “Professional” in its fee schedule to reflect the proposed capacity definition and types under proposed Rule 16.1.

Specifically, the Exchange notes the proposed change to the current language providing that the capacity types apply to transactions identified by a Member for clearing in the respective capacity type range at the OCC. The Exchange updates this language to provide that the defined capacity types apply to orders for the account of the respective capacity type.¹² This change reflects the proposed capacity type definitions under proposed Rule 16.1 and is in line with the capacity codes applicable to participants on the Exchange’s affiliated exchange, C2. The Exchange also believes that changing the definition of the capacity types to apply to an order for the account of the respective capacity types better aligns with the order identification requirements under Rule 20.7. Under Rule 20.7 a Member must submit proper order information when entering orders and maintain Customer order records that must contain, among other things, User capacity (as proposed). The Exchange believes that codifying in the Rules the codes that Users must apply to orders for the accounts of the various capacity types will provide additional transparency to Members regarding the appropriate order marking requirements.

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

¹² Though the Exchange proposes to remove the OCC clearing range language in order to better align these fee schedule definitions with those under proposed 16.1 and C2 Rule 1.1, this does not alter the manner in which each capacity type clears at the OCC.

Exchange and, in particular, the requirements of Section 6(b) of the Act.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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)¹⁵ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed change to adopt the definition of capacity, including types and codes, will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing Users with rules that accurately reflect and add detail to current System capacity code specifications for which a User must use to appropriately mark its orders. As a result, the proposed change will help facilitate understanding of and compliance with the rules. In addition to this, the Exchange believes that by harmonizing the definition of capacity types and codes, as well as the format of all BZX Options definitions, with that of its affiliated exchange, C2, will result in increased understanding of the Exchange's Rules and that of its affiliated exchange rules for those participating across the two affiliated exchanges.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ Id.

Additionally, the Exchange believes that the proposed change to reflect the proposed capacity definition throughout the corresponding definitions in the fee schedule will provide Members with clearer definitions of capacity types that will better align with the Exchange Rules as well as provide detail to the System specifications already in place. As a result, the proposed change will mitigate any confusion surrounding the fee schedule capacity definitions and applicable codes. As such, increased User understanding of the Exchange's fee schedule definitions as they correspond to the Exchange Rules will serve to remove impediments to and perfect the mechanism of a free and open market, and thereby protect investors. Likewise, the Exchange believes that the proposed change to Rule 20.7(b)(6) to more accurately reflect the proposed definition of capacity will also serve to remove impediments to and perfect the mechanism of a free and open market by aligning the Exchange Rules, in turn bolstering Member understanding, and thus, facilitating less burdensome regulatory compliance with the audit trail rules.

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 notes that the proposed rule change is not designed to address any competitive issues but is only intended to provide clarity with respect to the definition of capacity types and consistency throughout its Rules and fee schedule with respect to capacity codes. The Exchange does not believe that the proposed change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because all Users are already required to submit orders with the appropriate capacity code, and the same capacity codes are available to all Members. The Exchange also believes that the proposed rule change

reduces the regulatory compliance burden on all Members by better aligning the Rules and fee schedule with the existing audit trail requirements. Moreover, the Exchange does not believe that the proposed change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted, the proposed rule change is not intended as a competitive change, but rather to provide Members with added detail and clarity regarding the capacity codes applicable to their orders submitted to the Exchange.

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 for 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) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

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

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file 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.

Commission shall 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 (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-066 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-2019-066. 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-2019-066 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.¹⁸

Jill M. Peterson
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).