SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90352; File No. SR-CboeBZX-2020-078)

November 5, 2020

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Equity Transaction Fee Rebate Tiers

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 November 2, 2020, 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") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the 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

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

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 its fee schedule applicable to its equities trading platform ("BZX Equities") to: 1) update the Supplemental Incentive Program Tiers; 2) update the Lead Market Maker ("LMM") Add Volume Tiers and 3) eliminate the Non-Displayed Tape A Tier 1, effective November 2, 2020.

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 Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 18% 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 credits to members that provide 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

3 See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (October 28, 2020), available at https://markets.cboe.com/us/equities/market_statistics/.

liquidity, respectively. Currently, for orders priced at or above $1.00, the Exchange provides a standard rebate of $0.0020 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders priced below $1.00, the Exchange provides a standard rebate of $0.0009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity. 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.

Proposed Updates to the Supplemental Incentive Program Tiers

The Exchange currently offers three different Supplemental Incentive Program Tiers under footnote 1 of the Fee Schedule, wherein a Member may receive an additional rebate for qualifying orders where a Member adds a certain Tape ADAV[4] as a percentage of that Tape's TCV. Specifically, the Supplemental Incentive Program Tiers offered are as follows:

- Supplemental Incentive Program - Tape A Tier offers an additional rebate of $0.0001 for orders yielding fee code V[5] where a Member has a Tape A ADAV greater than or equal to 0.30% of the Tape A TCV;

[4] "ADAV" means average daily added volume calculated as the number of shares added per day.

[5] Appended to orders that add liquidity to BZX (Tape A) and offered a rebate of $0.002000 per share.

- Supplemental Incentive Program - Tape B Tier offers an additional rebate of $0.0001 for orders yielding fee code B[6] where a Member has a Tape B ADAV greater than or equal to 0.30% of the Tape B TCV; and
- Supplemental Incentive Program - Tape C Tier offers an additional rebate of $0.0001 for orders yielding fee code Y[7] where a Member has a Tape C ADAV greater than or equal to 0.30% of the Tape C TCV;

The proposed rule change amends the tiers' criteria by increasing the percentage of Tape ADAV over Tape TCV from 0.30% to 0.40% for Supplemental Incentive Program - Tape A and Tape C Tiers, and from 0.30% to 0.50% for Supplemental Incentive Program - Tape B Tier. The proposed rule change to the Supplemental Incentive Program Tiers does not alter any of the additional rebate amounts currently offered. Although the proposed changes to the thresholds result in more stringent criteria, Members still have an opportunity to receive the additional rebate if they meet the applicable tier threshold. Moreover, the proposed changes are designed to encourage Members to increase their Displayed liquidity in Tape A, B and C securities on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Proposed Updates to the LMM Add Volume Tiers

Under the Exchange's LMM Program, the Exchange offers daily incentives for LMMs in securities listed on the Exchange for which the LMM meets certain Minimum Performance

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6 Appended to orders that add liquidity to BZX (Tape B) and offered a rebate of $0.00200 per share.

7 Appended to orders that add liquidity to BZX (Tape C) and offered a rebate of $0.00200 per share.

Standards.[8] Such daily incentives are determined based on the number of Cboe-listed securities for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally, the more LMM Securities[9] for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those securities, the greater the total daily payment to the LMM. Currently, the Exchange offers 3 LMM Add Volume Tiera [sic] under footnote 14 of the Fee Schedule, which provides an additional rebate for applicable LMM orders. Specifically, the Supplemental Incentive Program Tiers currently offered are as follows:

- LMM Add Volume Tier 1 provides an additional rebate of $0.0001 for orders yielding fee codes B, V and Y where an LMM 1) has an ADAV greater than or equal to 0.20% of the TCV, 2) has an Average Aggregate Daily Auction Volume in LMM Securities greater than or equal to 500,000 and 3) is enrolled in at least 75 LMM Securities.
- LMM Add Volume Tier 2 provides an additional rebate of $0.0006 for orders yielding fee codes V and "HV"[10] where an LMM 1) is enrolled is enrolled in at least 50 LMM

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8 As defined in Rule 11.8(e)(1)(E), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

9 As defined in Rule 11.8(e)(1)(D), the term "LMM Security" means a Listed Security that has an LMM. As defined in Rule 11.8(e)(1)(B), the term "Listed Security" means any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.

10 Appended to non-displayed orders that add liquidity (Tape A) and are assessed a standard rebate of $0.00150.

Securities, and 2) has a Tape A ADAV greater than or equal to 0.10% of the Tape A TCV;

- LMM Add Volume Tier 3 provides an additional rebate of $0.0003 for orders yielding fee codes B and "HB"[11] where an LMM 1) is enrolled is enrolled in at least 50 LMM Securities, and 2) has a Tape B ADAV greater than or equal to 0.20% of the Tape B TCV;
- LMM Add Volume Tier 4 provides an additional rebate of $0.0006 for orders yielding fee codes Y and "HY"[12] where an LMM 1) is enrolled in at least 50 LMM Securities, and 2) has a Tape C ADAV greater than or equal to 0.10% of the Tape C TCV.

The Exchange proposes to update the TCV thresholds in LMM Add Volume Tiers 2, 3 and 4 as follows below. The Exchange notes that the additional rebates currently provided in each tier remain the same, as do the remaining criteria for each tier.

- To meet the proposed criteria in Tier 2, a Member must add a Tape A ADV greater than or equal to 0.20% (instead of 0.10%) of the Tape A TCV.
- To meet the proposed criteria in Tier 3, a Member must add a Tape B ADV greater than or equal to 0.35% (instead of 0.20%) of the Tape B TCV.
- To meet the proposed criteria in Tier 4, a Member must add a Tape C ADV greater than or equal to 0.20% (instead of 0.10%) of the Tape C TCV.

Although the proposed changes to these thresholds result in more stringent criteria, Members will still have an opportunity to receive the additional rebates for meeting the

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11 Appended to non-displayed orders that add liquidity (Tape B) and are assessed a standard rebate of $0.00150.

12 Appended to non-displayed orders that add liquidity (Tape C) and are assessed a standard rebate of $0.00150.

applicable tier thresholds. Moreover, the proposed changes are designed to encourage LMMs to increase both their Displayed and Non-Displayed liquidity in Tape A, B and C securities on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Non-Displayed Add Volume Tape A Tier 1

The Exchange also proposes to eliminate Non-Displayed Add Volume Tape A Tier 1, which is currently described under footnote 1 of the fees schedule. Particularly, this tier applies to orders yielding fee code HV and provides a $0.00275 per share rebate to Members that add an ADV greater than or equal to 0.20% of the TCV as Non-Displayed orders that yield fee codes HI or HV. Particularly, no Member has reached this tier in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such tiers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[13] in general, and furthers the objectives of Section 6(b)(4),[14] 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 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 changes reflect 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. The Exchange notes that

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, 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. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures, including schedules of 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. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable criteria and/or fees and rebates.

Regarding the proposed updates to the Supplemental Incentive and LMM Add Volume Tiers, the Exchange believes that the proposed tiers are reasonable because each of the tiers, as modified, continue to be available to all Members and provide Members an opportunity to receive an additional rebate, albeit using more stringent criteria. Additionally, the Exchange also believes that the tiers, even as amended, are reasonable, equitable and not unfairly discriminatory because competing equity exchanges offer similar tiered pricing structures with comparable criteria to that of the Supplemental Incentive[15] and LMM Add Volume Tiers.[16] The Exchange also believes that the current additional rebates continue to be commensurate with the proposed criteria. That is, the additional rebates reasonably reflect the difficulty in achieving the corresponding criteria as amended.

The Exchange further believes that the proposed criteria and corresponding additional rebates per tier are reasonable and equitable. Generally, Tape B experiences less variability in terms of broader market share, whereas Tape A and C tend to experience more volatility. As a result, the Exchange has observed that Members generally submit less Tape volume in connection with Tape A and Tape C. For example, the average Tape ADAV as a percentage of Tape TCV in Tape A and Tape C from LMM Members in the last month was lower than their average Tape ADAV over Tape TCV in Tape B. As a result, the Exchange believes Members are more easily able to meet a volume requirement for Tape B, and therefore, it is equitable to provide for a slightly higher ADAV Tape B threshold of Tape B TCV than that for Tape A and C.

The Exchange believes the proposed changes are also a reasonable means to incentivize Members to continue to provide liquidity adding, displayed volume (Supplemental Incentive Tiers) and displayed and non-displayed volume (for LMM Add Volume Tiers), which will benefit all market participants by incentivizing continuous liquidity and thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposed changes are designed to incentivize continuous displayed liquidity, which signals other market participants to

15 See NYSE Price List, "Credit Applicable to Supplemental Liquidity Providers ("SLPs")" and Nasdaq Equity 7, Section 118(a)(1).

16 See e.g., Nasdaq Phlx Equity 7 Pricing Schedule, Section 3(c), which provides up to an additional credit of $0.0003 for various order and quoting volume thresholds for the exchange's qualified market makers ("QMMs").

take the additional execution opportunities provided by such liquidity, while the proposed incentives to provide non-displayed liquidity will further contribute to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This 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.

In addition to this, the Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members will continue to be eligible for the Supplemental Incentive Tiers, as amended, and for the LMM Add Volume Tiers, as amended. 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 the proposed tiers. The Exchange notes that most recently, seven Members satisfied Supplemental Incentive Tier Tape A, seven members satisfied Supplemental Incentive Tier Tape B, and five Members satisfied Supplemental Incentive Tier Tape C. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that approximately four Members will be able to satisfy Supplemental Incentive Tier Tape A (as amended), five Members will be able to satisfy Supplemental Incentive Tier Tape B (as amended) and three Members will be able to satisfy Supplemental Incentive Tier Tape C (as amended). With respect to the LMM Add Volume Tiers, the Exchange notes that most recently, one Member satisfied LMM Add Volume Tier 2, two Members satisfied LMM Add Volume Tier 3 and two Members satisfied LMM Add Volume Tier 4. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, the Exchange anticipates that approximately one Member will be able to satisfy LMM Add Volume Tier 2 (as amended), one Member will be able to satisfy LMM Add Volume Tier 3 (as amended) and one Member will be able to satisfy LMM Add Volume Tier 4 (as amended). The Exchange also notes that the proposed tiers will not adversely impact any Member's ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria for a tier, the Member will merely not receive the corresponding additional rebate.

Finally, the Exchange believes the proposed amendment to remove Non-Displayed Add Volume Tape A Tier 1 is reasonable because no Member has achieved this tier in several months. Moreover, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for Non-Displayed liquidity, including the enhanced rebates under the Non-Displayed Add Volume Tiers under footnote 1 of the fees schedule. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members.

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 change furthers 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."[17]

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all Members equally in that all Members continue to be eligible for the Supplemental Incentive Tiers and LMM Add Volume Tiers (and have the same opportunity to become an LMM Member), have a reasonable opportunity to meet the tiers' criteria and will all receive the corresponding additional rebates if such criteria are met. Additionally, the proposed tier changes are designed to attract additional order flow to the Exchange. The Exchange believes that the updated tier criteria would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it 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.

Next, the Exchange believes the proposed rule change 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 15 other equities exchanges and off-exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on

[17] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

publicly available information, no single equities exchange has more than 18% of the market share. 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 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."[18] 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'….".[19] 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.

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

19 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)).

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[20] and paragraph (f) of Rule 19b-4 thereunder.[21] 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.

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-2020-078 on the subject line.

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20 15 U.S.C. 78s(b)(3)(A).

21 17 CFR 240.19b-4(f).

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-2020-078. 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-2020-078 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.[22]

J. Matthew DeLesDernier
Assistant Secretary

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22 17 CFR 200.30-3(a)(12).