SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-83673; File No. SR-CboeBZX-2018-051)

July 19, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Exchange Rule 11.13, Order Execution and Routing, to Amend the Operation of the Super Aggressive Order Instruction

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 July 11, 2018, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. 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

The Exchange filed a proposal to amend the operation of the Super Aggressive order instruction under paragraph (b)(4)(C) of Exchange Rule 11.13.

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

[2]   17 CFR 240.19b-4.

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

[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 parts 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 the description of the Super Aggressive Re-Route instruction ("Super Aggressive instruction") under paragraph (b)(4)(C) of Exchange Rule 11.13, Order Execution and Routing to: (i) specify that an incoming BZX Post Only Order or Partial Post Only at Limit Order that locks a resting order with a Super Aggressive instruction must be designated as eligible for display on the Exchange (a "displayed order") for the order with a Super Aggressive instruction to engage in a liquidity swap and execute against that incoming order; and (ii) modify language from the description of the Super Aggressive instruction that states if an order that does not contain a Super Aggressive instruction maintains higher priority than one or more Super Aggressive eligible orders, the Super Aggressive eligible order(s) with lower priority will not be converted and an incoming BZX Post Only Order or Partial Post Only at Limit Order will be posted or cancelled in accordance with Exchange Rule 11.9(c)(6) or 11.9(c)(7).

Super Aggressive is an optional order instruction that directs the System[5] to route an order when an away Trading Center locks or crosses the limit price of the order resting on the BZX Book.[6] When an order with a Super Aggressive instruction is locked by an incoming BZX Post Only Order or Partial Post Only at Limit Order (hereafter collectively referred to as a "Post Only Order") that does not remove liquidity pursuant to Rule 11.9(c)(6) or 11.9(c)(7), respectively,[7] the order with a Super Aggressive instruction is converted to an executable order and will remove liquidity against such incoming order.

First, the Exchange proposes to modify the behavior of the Super Aggressive instruction to require that the incoming Post Only Order that locks a resting order with a Super Aggressive instruction must be designated as a displayed order for an execution to occur. The Super Aggressive instruction is generally utilized for best execution purposes because it enables the order to immediately attempt to access displayed liquidity on another Trading Center that is either priced equal to or better than the order with a Super Aggressive instruction's limit price. The Super Aggressive instruction also enables the order to execute against an equally priced incoming Post Only Order that would otherwise not execute by being willing to act as the liquidity remover in such a scenario. Today, the incoming Post Only Order may either be a

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[5]   The term "System" is defined as "the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa).

[6]   See Exchange Rule 1.5(e).

[7]   A BZX Post Only Order will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. See Exchange Rule 11.9(c)(6). A Partial Post Only at Limit Order will remove liquidity from the BZX Book up to the full size of the order if, at the time of receipt, it can be executed at prices better than its limit price. See Exchange Rule 11.9(c)(7).

displayed order or a non-displayed order for it to engage in a liquidity swap with an order with a Super Aggressive instruction resting on the BZX Book.

Consistent with the Super Aggressive instruction to access liquidity displayed on other Trading Centers, the Exchange proposes to amend the Super Aggressive instruction such that an order with such instruction will execute against an equally priced incoming Post Only Order only when such order is to be displayed on the BZX Book. The order with a Super Aggressive instruction would continue to act as a liquidity remover in such a scenario. Should such an equally priced incoming Post Only Order not be designated as a displayed order, the resting order with a Super Aggressive instruction would remain on the BZX Book and await an execution where it may act as a liquidity provider. The incoming Post Only Order that is also designated as a non-displayed order would be posted to the BZX Book at its limit price, creating an internally locked non-displayed book. As is the case today, an execution would continue to occur where an incoming Post Only Order is priced more aggressively than the order with a Super Aggressive instruction resting on the BZX Book, regardless of whether the incoming Post Only Order was designated as a displayed order or a non-displayed order.[8]

The Exchange notes that Users seeking to act as a liquidity remover once resting on the BZX Book in all cases (i.e., seeking to execute against incoming Post Only orders regardless of the display instruction) may attach the Non-Displayed Swap ("NDS") instruction to their order.[9] The NDS instruction is similar to the Super Aggressive instruction, in that it also is an optional order instruction that a User may include on an order that directs the Exchange to have such order, when resting on the BZX Book, execute against an incoming Post Only Order rather than

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[8]   See id.

[9]   See Exchange Rule 11.9(c)(12).

have it be locked by the incoming order. Today, because orders with either instruction (i.e., Super Aggressive and NDS) will execute against incoming Post Only Orders regardless of whether the order is to be displayed, the instructions are currently identical with two exceptions. First, an order with a Super Aggressive instruction will not convert into a liquidity removing order and execute against a Post Only Order if there is an order on the order book with priority over such order that does not also contain a Super Aggressive instruction. As further described below, the Exchange is proposing to modify this feature of the Super Aggressive instruction. The second current distinction between the two instructions, which would remain, is that an order with a Super Aggressive instruction can be displayed on the Exchange whereas an order with the NDS instruction must be non-displayed. As amended, the additional distinction between the two instructions would be whether an order would become a liquidity removing order against any Post Only Order that would lock it (i.e., NDS) or only when the Post Only Order that would lock it also is a displayed order (i.e., Super Aggressive).

The below examples illustrate the proposed behavior. Assume the National Best Bid and Offer ("NBBO") is $10.00 by $10.10. An order to buy is displayed on the BZX Book at $10.00 with a Super Aggressive instruction. There are no other orders resting on the BZX Book. An order to sell at $10.00 with a Post Only that is designated as a displayed order is entered. The incoming order to sell would execute against the resting order to buy at $10.00, the locking price, because the incoming order was designated as a displayed order. The order to buy would act as the liquidity remover and the order to sell would act as the liquidity adder. However, no execution would occur if the incoming order to sell was designated as a non-displayed order. Instead, the incoming order to sell would be posted non-displayed to the BZX Book at $10.00, its limit price, causing the BZX Book to be internally locked.

Second, the Exchange proposes to enable a Post Only Order that is designated as a displayed order to execute against an equally priced non-displayed order with a Super Aggressive instruction where a non-displayed order without a Super Aggressive instruction maintains time priority over the Super Aggressive eligible order at that price. In such case, the non-displayed, non-Super Aggressive order seeks to remain a liquidity provider and would cede time priority to the order with a Super Aggressive instruction, which is willing to act as a liquidity remover to facilitate the execution. The Exchange proposes to effect this change by modifying language in the description of the Super Aggressive instruction to state that if an order displayed on the BZX Book does not contain a Super Aggressive instruction and maintains higher priority than one or more Super Aggressive eligible orders, the Super Aggressive eligible order(s) with lower priority will not be converted and the incoming Post Only Order will be posted or cancelled in accordance with Exchange Rule 11.9(c)(6) or Rule 11.9(c)(7). Thus, an order with a Super Aggressive instruction, whether displayed on the Exchange or non-displayed, will never execute ahead of a displayed order that maintains time priority.

The Super Aggressive instruction is designed to facilitate executions that would otherwise not occur due to Post Only Order requirement to not remove liquidity. Users entering orders with the Super Aggressive instruction tend to be fee agnostic because an order with a Super Aggressive instruction is willing to route to an away Trading Center displaying an equally or better priced order (i.e., pay a fee at such Trading Center). Meanwhile, an order without the Super Aggressive instruction elects to remain on the BZX Book as the liquidity provider until it may execute against an incoming order that would act as the liquidity remover. Therefore, enabling the Super Aggressive order to execute against an incoming order, regardless of whether a non-displayed order without a Super Aggressive instruction maintains priority, is consistent

with the User's intent for both orders – one choses to remain the liquidity provider and forgo the execution while the other is willing to execute irrespective of whether it is the liquidity provider or remover. The Exchange notes that similar behavior occurs for orders utilizing the NDS instruction,[10] which also seeks to engage in a liquidity swap against incoming Post Only Orders. The Exchange, however, has proposed to retain the existing limitation with respect to orders displayed on the BZX Book.

The following example illustrates the operation of an order with a Super Aggressive instruction under the proposed rule change. Assume the NBBO is $10.00 by $10.04. There is a non-displayed Limit Order to buy resting on the BZX Book at $10.03 ("Order A"). A second non-displayed Limit Order to buy at $10.03 is then entered with a Super Aggressive instruction and has time priority behind the first Limit Order ("Order B"). A Post Only Order to sell priced at $10.03 is entered. Under current behavior, the incoming sell Post Only Order would not execute against Order A and would post to the BZX Book[11] because the value of such execution against the resting buy order when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. Further, the incoming sell Post Only Order could not execute against Order B because Order A is on the BZX Book and maintains time priority over Order B. Under the proposed change, the incoming sell order, if it was designated as a displayed order, would execute against Order B and Order B would become the

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10   See Exchange Rule 11.9(c)(12). See also Securities Exchange Act Release No. 83537 (June 28, 2018), (SR-CboeBZX-2018-042) (including an example where an order cedes execution priority to an order with an NDS instruction).

11   Such order would be posted to the BZX Book in accordance with the Exchange's re-pricing instructions to comply with Rule 610(d) of Regulation NMS. See Exchange Rules 11.9(g)(1) and (g)(2). See also 242 CFR 242.610(d).

remover of liquidity while the incoming sell Post Only Order would become the liquidity

provider. In such case, Order A cedes priority to Order B because Order A did not also include a

Super Aggressive instruction[12] and thus the User that submitted the order did not indicate the

preference to be treated as the remover of liquidity in favor of an execution; instead, by not using

Super Aggressive, a User indicates the preference to remain posted on the BZX Book as a

liquidity provider. However, if the incoming sell order was priced at $10.02, it would receive

sufficient price improvement to execute upon entry against all resting buy Limit Orders in time

priority at $10.03.[13] Also, if Order A was displayed on the BZX Book, no execution would

occur, as the proposed change would only apply to non-displayed liquidity.

2.   Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[14] in

general, and furthers the objectives of Section 6(b)(5) of the Act[15] in particular, in that it is

designed to promote just and equitable principles of trade, to foster cooperation and coordination

with persons engaged in 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.

The proposed changes to the Super Aggressive order instruction are designed to promote

just and equitable principles of trade, to foster cooperation and coordination with persons

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[12]   This behavior is consistent with the operation of the Exchange's NDS instruction. See
         supra note 10.

[13]   The execution occurs here because the value of the execution against the buy order when
         removing liquidity exceeds the value of such execution if the order instead posted to the
         BZX Book and subsequently provided liquidity, including the applicable fees charged or
         rebates provided. See supra note 7.

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

[15]   15 U.S.C. 78f(b)(5).

engaged in 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. The Super Aggressive instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposal to limit the execution of an order with a Super Aggressive instruction to execute against incoming Post Only Orders that also are designated as displayed orders promotes just and equitable principles of trade because it enables Users to elect an order instruction consistent with their intent to execute only against displayed orders, in part, for best execution purposes. The amended Super Aggressive instruction would ensure executions at the best available price displayed on another Trading Center or against an incoming order that would have been displayed on the BZX Book. Users seeking to act as a liquidity remover once resting on the BZX Book and execute against an incoming Post Only Order that is also designated as a non-displayed order may attach the NDS instruction to their order.[16]

The proposed change to the Super Aggressive instruction also removes impediments to and perfects the mechanism of a free and open market and a national market system because it is designed to facilitate executions that would otherwise not occur due to the Post Only Order requirement to not remove liquidity. The proposal enables non-displayed Super Aggressive orders to execute against an incoming order, regardless of whether another non-displayed order without a Super Aggressive instruction maintains priority consistent with the User's intent for both orders – one chooses to remain the liquidity provider and forgo the execution while the other is willing to execute irrespective of whether it is the liquidity provider or remover. The non-Super Aggressive order seeks to remain a liquidity provider and cede its time priority to the

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[16]   See Exchange Rule 11.9(c)(12).

order with a Super Aggressive instruction, which is willing to act as a liquidity remover to facilitate the execution. It also enables an order without the Super Aggressive instruction to remain on the BZX Book as a liquidity provider, consistent with the expected operation of their resting order. The Exchange notes that similar behavior occurs for orders utilizing the NDS[17] instruction, which also seeks to engage in a liquidity swap against incoming Post Only Orders. Finally, by limiting the proposed change to non-displayed orders, the proposal remains consistent with NDS and also retains existing functionality with respect to the handling of displayed orders.

For the reasons set forth above, the Exchange believes the proposal removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

B.   Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the proposed changes to the Super Aggressive order instruction are intended to improve the usefulness of the instruction and to align its operation with the intention of the User, resulting in enhanced competition through increased usage and execution quality on the Exchange. Thus, to the extent the change is intended to improve functionality on the Exchange to encourage Users to direct their orders to the Exchange, the change is competitive, but the Exchange does not believe the proposed change will result in any burden on intermarket competition as it is a minor change to available functionality. The proposed changes to the Super Aggressive order instruction also promote intramarket competition because they will facilitate the execution of orders that would otherwise remain unexecuted consistent with the

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[17]   See supra note 10.

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intent of the User entering the order, thereby increasing the efficient functioning of the

Exchange. Further, the Super Aggressive order instruction will remain available to all Users in

the same way it is today. Thus, Users can continue to choose between various optional order

instructions, including Super Aggressive, NDS, and others, depending on the order handling they

prefer the Exchange to utilize. Therefore, the Exchange does not believe the proposed rule

change will result in any burden on intramarket competition that is not necessary or appropriate

in furtherance of the purposes of the Act.

        C.   <u>Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others</u>

The Exchange has neither solicited nor received written comments on the proposed rule

change.

III.   <u>Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action</u>

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of

the Act[18] and subparagraph (f)(6) of Rule 19b-4 thereunder.[19]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative

for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)[20] permits the Commission

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[18]   15 U.S.C. 78s(b)(3)(A)(iii).

[19]   17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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.

[20]   17 CFR 240.19b-4(f)(6)(iii).

to designate a shorter time if such action is consistent with the protection of investors and the

public interest. In its filing, BZX requested that the Commission waive the 30-day operative

delay so that the Exchange can implement the proposed rule change promptly after filing. The

Exchange stated that the proposal to allow an order with a Super Aggressive instruction to

execute against an incoming Post Only order only if the Post Only order is displayable is

consistent with the use of the Super Aggressive instruction to access liquidity displayed on other

Trading Centers. Further, according to the Exchange, users seeking to execute against incoming

non-displayable Post Only orders will continue to be able to attach the NDS order instruction, as

well as other order instructions that may permit such executions. In addition, the Exchange

stated that the proposed priority change where non-displayed orders without a Super Aggressive

instruction would cede priority to non-displayed orders with a Super Aggressive instruction is

similar to, and consistent with, the Exchange's priority ceding functionality for orders with an

NDS instruction and would facilitate executions that would otherwise not occur due to an

incoming Post Only order's requirement not to remove liquidity. The Commission believes that

waiver of the 30-day operative delay is consistent with the protection of investors and the public

interest, as the proposed rule change relates to optional functionality that is consistent with

existing functionality and, if selected by Exchange users, may enable them to better manage their

orders and may increase order interaction on the Exchange. Accordingly, the Commission

hereby waives the 30-day operative delay and designates the proposed rule change operative

upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission

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[21] For purposes only of waiving the 30-day operative delay, the Commission has also
considered the proposed rule's impact on efficiency, competition, and capital formation.
See 15 U.S.C. 78c(f).

summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-2018-051 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-2018-051. 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

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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-2018-051,

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]

                     Eduardo A. Aleman
                     Assistant Secretary

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[22]   17 CFR 200.30-3(a)(12) and (59).