

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90863; File No. SR-CboeBZX-2021-004)

January 6, 2021

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

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 January 4, 2021, 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 the 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 amend the fee schedule applicable to its equities trading platform ("BZX Equities") to update the Standard Rates and Enhanced Rates provided under the Lead Market Maker ("LMM") Liquidity Provision Rates, effective January 4, 2021. The Exchange believes the proposed changes will better incentivize LMMs to meet the Standard and Enhanced Minimum Performance Standards where their average aggregate daily auction volume is 1,000,000 shares or less.

The Exchange first notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to participate as LMMs in the Exchange's LMM Program, which the Exchange believes will enhance market quality in

all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange currently offers daily incentives for LMMs in Exchange Traded Products (“ETPs”) listed on the Exchange for which the LMM meets certain Minimum Performance Standards.³ Such daily incentives are determined based on the number of Cboe-listed ETPs for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally speaking, the more LMM Securities⁴ for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those ETPs, the greater the total daily payment to the LMM. Such daily incentive Standard Rates are structured as follows:

³ 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.

⁴ As defined in Rule 11.8(e)(1)(D), the term “LMM Security” means an ETP that has an LMM.

	Average Aggregate Daily Auction Volume in LMM Securities					
	0-10,000	10,001-100,000	100,001-500,000	500,001-1,000,000	1,000,001-3,000,000	3,000,001 or greater
Daily Incentive for each Qualified Security 1-5	\$10	\$25	\$40	\$50	\$150	\$200
Daily Incentive for each Qualified Security 6-25	\$10	\$25	\$25	\$30	\$100	\$150
Daily Incentive for each Qualified Security 26-50	\$10	\$10	\$20	\$25	\$75	\$100
Daily Incentive for each Qualified Security 51-100	\$10	\$10	\$15	\$20	\$50	\$75
Daily Incentive for each Qualified Security Greater Than 100	\$10	\$10	\$15	\$15	\$25	\$50

By way of example, if an LMM has 30 LMM Securities, each of which is a Qualified ETP,⁵ 10 of which each have an average daily auction volume of 5,000 shares (combined between the opening and closing auction), 10 of which each have an average daily auction volume of 50,000 shares (combined between the opening and closing auction), and 10 of which each have an average daily auction volume of 200,000 shares (combined between the opening and closing auction), then the LMM would fall into the fifth column ($10 \times 5,000 + 10 \times 50,000 + 10 \times 200,000 = 2,550,000$ average aggregate daily auction volume). As such, the LMM would

⁵ As provided in footnote 14 of the Fee Schedule, a “Qualified ETP” is an ETP for which an LMM is a Qualified LMM.

receive \$150 each for five Qualified ETPs, \$100 each for Qualified ETPs 6-25, and \$75 each for Qualified ETPs 26-30. This would result in a daily payment of $(\$150*5) + (\$100*20) + (\$75*5) = \$3,125$ to the LMM.

LMMs that meet a more stringent set of standards also receive enhanced daily incentives (i.e., the Enhanced Rates), as follows:

	Average Aggregate Daily Auction Volume in LMM Securities					
	0-10,000	10,001-100,000	100,001-500,000	500,001-1,000,000	1,000,001-3,000,000	3,000,001 or greater
Daily Incentive for each Enhanced Security 1-5	\$2.50	\$6.25	\$10	\$12.50	\$37.50	\$50
Daily Incentive for each Enhanced Security 6-25	\$2.50	\$6.25	\$6.25	\$7.50	\$25	\$37.50
Daily Incentive for each Enhanced Security 26-50	\$2.50	\$2.50	\$5	\$6.25	\$18.75	\$25
Daily Incentive for each Enhanced Security 51-100	\$2.50	\$2.50	\$3.75	\$5	\$12.50	\$18.75
Daily Incentive for each Enhanced Security Greater Than 100	\$2.50	\$2.50	\$3.75	\$3.75	\$6.25	\$12.50

Using the same example as above, where the LMM has 30 LMM Securities, 10 of which are Enhanced ETPs, which have 2,550,000 shares of average aggregate daily auction volume in LMM Securities, the issuer would fall into the fifth column. As such, the LMM would receive an additional \$37.50 for each of its first five Enhanced ETPs and an additional \$25 each for

Enhanced ETPs 6-10. This would result in an additional daily payment of $(\$37.50*5) + (\$25*5) = \$312.50$ to the LMM.

Proposed Changes

The Exchange proposes to amend the Standard Rates and Enhanced Rates discussed above. First, the Exchange proposes to eliminate the sixth column of both the Standard Rates and Enhanced Rates so that average aggregate daily auction volume of 1,000,001 shares or more is considered the highest average aggregate daily auction volume column.

Second, the Exchange proposes to reduce the Standard Rates payments for average aggregate daily auction volume of 1,000,001 shares or more for each row of Qualified Security ranges. Specifically, the Exchange proposes to reduce the payments in the fifth column as follows: \$100 Daily Incentive for each Qualified Security 1-5, \$70 Daily Incentive for each Qualified Security 6-25, \$50 Daily Incentive for each Qualified Security 26-50, \$25 Daily Incentive for each Qualified Security 51-100, and \$20 Daily Incentive for each Qualified Security greater than 100.

For instance, using the same example as above, where the LMM has 30 LMM Securities, 10 of which each have an average daily auction volume of 5,000 shares, 10 of which each have an average daily auction volume of 50,000 shares, and 10 of which each have an average daily auction volume of 200,000 shares, then the LMM would fall into the fifth column ($10*5,000 + 10*50,000 + 10*200,000 = 2,550,000$ average aggregate daily auction volume). As such, under the proposed Standard Rates the LMM would receive \$100 each for Qualified ETPs 1-5, \$70 each for Qualified ETPs 6-25, and \$50 each for Qualified ETPs 26-30. This would result in a daily payment of $(\$100*5) + (\$70*20) + (\$50*5) = \$2,150$ to the LMM.

Third, the Exchange proposes to decrease the Enhanced Rates payments for securities

with average aggregate daily auction volume over 1,000,000 shares and increase the Enhanced Rates payments for securities with average aggregate daily auction volume of 1,000,000 shares or lower. Specifically, the Exchange proposes the following Enhanced Rates:

	Average Aggregate Daily Auction Volume in LMM Securities				
	0-10,000	10,001-100,000	100,001-500,000	500,001-1,000,000	1,000,001 or greater
Daily Incentive for each Enhanced Security 1-5	\$3	\$7.50	\$12	\$15	\$30
Daily Incentive for each Enhanced Security 6-25	\$3	\$7.50	\$7.50	\$9	\$21
Daily Incentive for each Enhanced Security 26-50	\$3	\$3	\$6	\$7.50	\$15
Daily Incentive for each Enhanced Security 51-100	\$3	\$3	\$4.50	\$6	\$7.50
Daily Incentive for each Enhanced Security Greater Than 100	\$3	\$3	\$4.50	\$4.50	\$6

The proposed changes are designed to encourage LMMs with average aggregate daily auction volume of 1,000,000 shares or less to meet the Standard and Enhanced Minimum Performance Standards. The proposed changes would decrease payments in LMM securities with average aggregate daily auction volume of 1,000,001 shares or greater. Using the same example above, where the LMM has 30 LMM Securities, 10 of which are Enhanced ETPs, which have 2,550,000 shares of average aggregate daily auction volume in LMM Securities, the

issuer would fall into the fifth column. As such, the LMM would receive an additional \$30 for each of its first five Enhanced ETPs and an additional \$21 each for Enhanced ETPs 6-10. This would result in an additional daily payment of $(\$30*5) + (\$21*5) = \$255$ to the LMM as opposed to the \$312.50 it would receive under the current Enhanced Rates.

However, the proposed Enhanced Rates are also designed to increase payments in LMM Securities with 1,000,000 or less average aggregate daily auction volume. For example, if an LMM has 30 LMM Securities, each of which is a Qualified ETP, 10 of which each have an average daily auction volume of 500 shares, 10 of which each have an average daily auction volume of 10,000 shares, and 10 of which each have an average daily auction volume of 20,000 shares, then the LMM would fall into the third column ($10*500 + 10*10,000 + 10*20,000 = 305,000$ average aggregate daily auction volume). As such, the LMM would receive \$12 each for Qualified ETPs 1-5, \$7.50 each for Qualified ETPs 6-25, and \$6 each for Qualified ETPs 26-30. This would result in a daily payment of $(\$12*5) + (\$7.50*20) + (\$6*5) = \240 to the LMM. Under the current Enhanced Rates, the LMM would receive a daily payment of $(\$10*5) + (6.25*20) + (5*5) = \200 .

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 Section 6(b) of the Act.⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁷ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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)⁸ 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. The Exchange also notes that its listing business operates in a highly-competitive market in which market participants, which includes issuers of securities, LMMs, and other liquidity providers, can readily transfer their listings, opt not to participate, or direct order flow to competing venues if they deem fee levels, liquidity provision incentive programs, or any other factor at a particular venue to be insufficient or excessive. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to participate as LMMs in the Exchange's LMM Program, which the Exchange believes will enhance market quality in all securities listed on the Exchange and encourage issuers to list new products and transfer existing products to the Exchange.

The Exchange believes that the proposed changes to the Standard Rates and Enhanced Rates of the LMM Liquidity Provision Rates are consistent with the Act and represent a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in ETPs listed on the Exchange. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Specifically, the Exchange

⁸Id.

believes that the proposal is reasonable because it believes that the proposed amendments will encourage LMMs with lower aggregate auction volumes to meet the Enhanced Minimum Performance Standards. The Exchange believes that incentivizing such LMMs to meet the Enhanced Minimum Performance Standards will increase market quality in lower volume BZX-listed ETPs. To the extent that market quality in any BZX-listed ETP is negatively impacted, competitive forces would generally dictate that the primary listing venue enhance their own liquidity provision programs or that the security would transfer to a different primary listing venue.

The Exchange believes that the proposal represents an equitable allocation of payments and is not unfairly discriminatory because, while the proposed payments apply only to LMMs, such LMMs must meet rigorous Minimum Performance Standards in order to receive the payments. Where an LMM does not meet the Minimum Performance Standards for the Standard and Enhanced Rates, they will not receive the applicable payment. Further, registration as an LMM is available equally to all Members and allocation of listed ETPs between LMMs is governed by Exchange Rule 11.8(e)(2). If an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

Further, the proposed daily payment amounts would continue to be based specifically on the Exchange's revenue model. For ETPs with greater auction volume, the Exchange generally makes more money and, thus, is able to offer LMMs with LMM Securities that have higher average aggregate daily auction volume higher payments. Specifically, the payment per Qualified ETP (and thus the total payment to an LMM) generally goes up as the CADV moves from left to right because as the average aggregate daily auction volume in LMM Securities

increases, the Exchange will generate additional revenue and can thus support increased payments to LMMs. Similarly, the payments per Qualified ETP generally go down as the number of Qualified ETPs goes up in order to ensure that the daily incentive payments do not exceed the Exchange's revenue for that LMM's LMM Securities while still providing incentives for LMMs to take on additional ETPs. While the proposed changes would reduce payments to LMMs with higher average aggregate daily auction volume, such payments would still be higher than the proposed increased payments for LMMs with lower average aggregate daily auction volume. As such, the Exchange believes that the proposal is an equitable allocation of payments and is not unfairly discriminatory.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to become LMMs in BZX-listed ETPs and as a listing venue by enhancing market quality in BZX-listed ETPs. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer ETP listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, or competing ETP listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed ETPs, to the benefit of all investors in BZX-listed ETPs. The Exchange does not believe

the proposed amendment would burden intra-market competition as it would be available to all Members uniformly. Registration as an LMM is available equally to all Members and allocation of listed ETPs between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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 Act⁹ and paragraph (f) of Rule 19b-4 thereunder.¹⁰ 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:

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f).

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-2021-004 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-2021-004. 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-2021-004 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).