

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96130; File No. SR-CboeBZX-2022-051)

October 24, 2022

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

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 October 11, 2022, 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”) proposes to amend its 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 proposed rule change. The text of these statements may be examined at the places specified in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 update its Fee Schedule for its equity options platform (“BZX Options”) to correct inadvertent marking errors in the Standard Rates table in the Fee Schedule made in connection with previous rule changes.

First, the Exchange proposes to update the Add rebates for Customer, Non-Penny Program Securities transactions (fee code “NY”) in the Standard Rates table. Initially, the Exchange submitted a rule filing in August 2021 (“August Filing”), which among other things, amended the enhanced rebates provided under the Customer Non-Penny Add Volume Tiers under Footnote 12 to range from between \$0.92 and \$1.06 per contract across 5 tiers, to between \$0.90 and \$1.05 per contract across eight tiers.³ On January 4, 2022, the Exchange submitted a cleanup rule filing (“January Filing”),⁴ to amend the Fee Schedule to reflect the new volume tier enhanced rebates that were proposed in the August Filing under the Customer Non-Penny Add Volume Tiers under Footnote 12, but inadvertently not added to the corresponding Standard Rates table for Customer, Non-Penny Program Securities Add transactions. In the January Filing however, the Exchange also inadvertently removed the standard rebate for Customer, Non-Penny Program Securities Add transactions (which was, and still is, \$0.85) in its entirety. The Exchange

³ See Securities Exchange Act Release No. 92635 (August 11, 2021), 86 FR 46028 (August 17, 2021) (SR-CboeBZX-2021-055).

⁴ See Securities Exchange Act Release No. 93974 (January 13, 2022), 87 FR 3160 (January 20, 2022) (SR-CboeBZX-2022-002).

now proposes to add the standard rebate of \$0.85 back in the Standard Rates table under the Non-Penny Program Securities for Add transactions for corresponding fee code “NY.”

Next, the Exchange proposes to add a reference to fee code “PD” in the Standard Rates table for Firm, Broker Dealer and Joint Back Office orders in Penny Program Securities, which are subject to a standard rate of \$0.50 per contract. On May 3, 2021, the Exchange submitted a filing (“May Filing”), which among other things, adopted new fee code “PD”.⁵ Particularly, prior to the May Filing, fee code “PP” was appended to all Non-Customer (i.e., Firm, Broker Dealer, Joint Back Office, Market Maker, Away Market Maker and Professional capacities) orders that removed liquidity in Penny securities and which were assessed a fee of \$0.50 per contract. In the May Filing, the Exchange proposed to create a remove Penny liquidity fee code specific to Firm, Broker Dealer and Joint Back Office orders (i.e., fee code “PD”), which would continue to yield the same standard rate of \$0.50 per contract. The Exchange however inadvertently omitted adding new fee code “PD” to the Standard Rates table applicable to Firm Broker Dealer and Joint Back Office orders that remove volume in Penny Program Securities. The Exchange now proposes to add in the fee code “PD” in the Standard Rates table.

Next, the Exchange proposes to update the Remove fees listed for Market Maker, Away Market Maker, and Professional transactions in Penny Program Securities in the Standard Rates table. Specifically, in the previously mentioned August Filing, the Exchange also amended the reduced fees offered under Tiers 1 -3 of the Market Maker, Away Market Maker, and Professional Penny Take Volume Tiers under Footnote 3 from \$0.45, \$0.45 [sic] and \$0.47 [sic]

⁵ See Securities Exchange Act Release No. 91831 (May 10, 2021), 86 FR 26577 (May 14, 2021) (SR-CboeBZX-2021-038).

to \$0.47 [sic], \$0.48 and \$0.49 [sic] across the three tiers.⁶ The Exchange however at that time inadvertently omitted to also update the corresponding rates listed in the Standard Rates table of the Fees Schedule applicable to Market Maker, Away Market Maker, and Professional orders that remove volume in Penny Program Securities (i.e., the current Standard Rates table still only reflects reduced fees of \$0.45 and \$0.47, instead of \$0.47, \$0.48, and \$0.49, in addition to the standard fee of \$0.50). The Exchange now proposes to update the rates listed in the Standard Rates table under fee code “PP” for Market Maker, Away Market Maker, and Professional orders that remove volume in Penny Program Securities to reflect the rates proposed in the August Filing applicable to such orders.⁷

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁸ in general, and furthers the objectives of Section 6(b)(4),⁹ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)¹⁰ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

⁶ See Securities Exchange Act Release No. 92635 (August 11, 2021), 86 FR 46028 (August 17, 2021) (SR-CboeBZX-2021-055).

⁷ The Exchange notes that as a result of adding fee code “PD” to the Fees Schedule, Penny Program Securities Remove rates for Market Makers and Away Market Makers are now separate from rates for Professionals (notwithstanding all such orders yielding fee code “PP”). As such, the Exchange proposes to replicate and add Fee Code PP and the corresponding fees under the Market Maker and Away Market rows.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(4).

¹⁰ 15 U.S.C. 78f.(b)(5).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed changes are reasonable, equitable and not unfairly discriminatory as it does not change the fees or rebates currently assessed by the Exchange, but rather updates the Standard Rates table to reflect previously filed fee changes which inadvertently were not carried over into the Standard Rates table at the time the original filings were submitted. Indeed, the proposed rule changes are merely corrective changes made to the Fee Schedule designed to accurately reflect the current rates for the respective orders, which increases transparency in the Fees Schedule and reduces potential confusion regarding the appropriate rates for such orders.

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 intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely corrects inadvertent marking errors in the Fee Schedule, which is designed to accurately reflect the current rates for the corresponding applicable orders, thereby increasing transparency in the Fee Schedule and reducing potential confusion regarding the appropriate rates applicable to such orders without having any impact on competition.

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 Act¹¹ and paragraph (f) of Rule 19b-4¹² thereunder. 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-2022-051 on the subject line.

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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-2022-051. 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 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-2022-051 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.¹³

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(12).