

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96357; File No. SR-CboeBZX-2022-055)

November 18, 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 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 10, 2022, 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 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/](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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 amend its Fee Schedule to modify the required criteria of the Tape B Volume and Quoting Tier 1 and to clarify that fee code X<sup>3</sup> is applicable to certain routed orders that add or remove liquidity.<sup>4</sup>

The Exchange first notes that its listing business also operates in a highly-competitive market in which market participants, which includes issuers of securities, Lead Market Makers (“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. Footnote 13 of the Fee Schedule provides for the Tape B Volume and Quoting Tiers, which are designed to incentivize market participants to enroll in LMP Securities,<sup>5</sup> 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.

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<sup>3</sup> Fee code X is appended to routed orders.

<sup>4</sup> The Exchange initially filed the proposed fee changes on November 1, 2022 (SR-CboeBZX-2022-054). On November 10, 2022, the Exchange withdrew that filing and submitted this filing.

<sup>5</sup> “LMP Securities” means a list of securities included in the Liquidity Management Program, the universe of which is determined by the Exchange and published in a circular distributed to Members and on the Exchange’s website. Such LMP Securities include all Cboe-listed Exchange-Traded Products (“ETPs”) and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality.

The Exchange currently offers two Tape B Volume and Quoting Tiers under Footnote 13, which provide an additional rebate of \$0.0001 (Tier 1) and \$0.0002 (Tier 2) per share for orders that meet certain criteria. Tier 1 provides an additional rebate if (i) the Member is enrolled in at least 50 BZX-listed LMP Securities, for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) the Member has a NBBO Time<sup>6</sup> of equal to or greater than 15% or a NBBO Size Time<sup>7</sup> of equal to or greater than 25%; and (2) the Member has a Displayed Size Time<sup>8</sup> of equal to or greater than 90%; and (ii) the Member adds a Tape B ADV<sup>9</sup> of equal to or greater than 0.50% of the TCV.<sup>10</sup> All Members are eligible to enroll in LMP Securities and are eligible for the current Tape B Volume and Quoting Tiers. Such rebates are applicable to orders that add liquidity which are appended with fee code B.<sup>11</sup> LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. In order to further incentivize market participants to achieve the Tape B Volume and Quoting Tier 1, the Exchange proposes to eliminate the Tape B ADV requirement from the second prong (ii) of the Tier 1 criteria, which will make the criteria less stringent.

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<sup>6</sup> “NBBO Time” means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO.

<sup>7</sup> “NBBO Size Time” means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange.

<sup>8</sup> “Displayed Size Time” means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively.

<sup>9</sup> “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day.

<sup>10</sup> “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>11</sup> Fee code B is appended to a displayed order that adds liquidity to BZX (Tape B).

Next, the Exchange proposes to clarify that fee code X is applicable to routed orders that add or remove liquidity. When certain fee codes were deleted from the Fee Schedule the Exchange simultaneously proposed to update fee code X to make clear it applies to all other routed orders that are not otherwise specified under other fee codes in the Fee Schedule.<sup>12</sup> However, the Exchange did not make clear in the fee code table that fee code X is therefore also applicable to orders that both add and remove liquidity.<sup>13</sup> Therefore, the Exchange is now proposing to add such language to the description of fee code X, as well as eliminate the reference to “Removing” liquidity in the Standard Rates header for the Routing Liquidity column (which is applicable to fee code X).

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act of 1934 (the “Act”),<sup>14</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>15</sup> 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 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

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<sup>12</sup> See Securities Exchange Act No. 91002 (January 27, 2021) 86 FR 7902 (February 2, 2021) (SR-CboeBZX-2021-010).

<sup>13</sup> Under the Transaction Fees section of the Fee Schedule, bullet four provides “[u]nless otherwise noted, all routing fees or rebates in the Fee Codes and Associated Fees table are for removing liquidity from the destination venue.”

<sup>14</sup> 15 U.S.C. 78f.

<sup>15</sup> 15 U.S.C. 78f(b)(4).

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 change to the Tape B Volume and Quoting Tier 1 reflects a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities, 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 change to the Tape B Volume and Quoting Tier1 is 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. LMP incentives are designed to apply to Tape B trades as BZX-listed securities are Tape B securities. The proposed change is designed to make Volume and Quoting Tier 1 less stringent. The Exchange believes that the proposal to amend Tape B Volume and Quoting Tier 1 represents an equitable allocation of fees and other charges because the Tape B Volume and Quoting Tiers are available equally to all Members and all Members are eligible to enroll in LMP Securities. Based on the prior month's trading volume, the Exchange anticipates at least two Members will meet the amended Tape B Volume and Quoting Tier 1. Further, the Exchange believes that the proposal represents an equitable allocation of fees and other charges and is not unreasonably discriminatory because enrolling in LMP Securities is open to all Members and any Member that wishes to receive the Tape B Volume and Quoting Tier 1 must meet the proposed quoting and execution standards in order to receive the additional rebate, as outlined above. Where a Member does not meet the

requirements, they will not receive the additional rebate. Further and as noted throughout, the Tape B Volume and Quoting Tiers are designed to enhance market quality in BZX-listed securities and to make the Exchange more competitive as an ETP listing venue.

The Exchange believes the proposal to modify fee code X to explicitly provide that it is applicable to routed orders that add and remove liquidity on the destination exchange is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, the proposal is intended only to make a clarifying change to the Fee Schedule and involves no substantive change.

**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 does not believe the proposed change to the Tape B Volume and Quoting Tier 1 burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX both among Members by incentivizing Members to enroll in LMP Securities and as a listing venue by enhancing market quality in BZX-listed securities. The marketplace for listings is extremely competitive and there are several other national securities exchanges that offer listings. Transfers between listing venues occur frequently for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as a listing venue. Accordingly, the Exchange does not believe that the proposed change will impair the ability of issuers, LMMs, other Members, or competing listing venues to maintain their competitive standing. The Exchange also notes that the proposed change is intended to enhance market quality in BZX-listed securities and other listed securities, to the benefit of all investors in such BZX-listed securities. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

The Exchange believes its proposal to clarify that fee code X is applicable to liquidity adding and removing orders will have no impact on competition as it involves no substantive change, but merely is a clarifying change to the existing Fee Schedule.

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<sup>16</sup> and paragraph (f) of Rule 19b-4<sup>17</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2022-055 on the subject line.

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 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-2022-055. 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-2022-055 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.<sup>18</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).