

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97513; File No. SR-CboeBZX-2023-033)

May 16, 2023

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”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2023, Cboe BZX Exchange, Inc. (“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/), 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 amend its Fee Schedule applicable to its equities trading platform (“BZX Equities”) by: 1) introducing a new Add Volume Tier; 2) introducing a new Non-Displayed Add Volume Tier; 3) eliminating Step-Up Tiers 1 and 4 and the Non-Displayed Step Up Tier; and 4) reducing the enhanced rebates associated with certain fee codes. The Exchange proposes to implement these changes effective May 1, 2023.³

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 Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,⁴ no single registered equities exchange has more than 16% 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 rebates to

³ The Exchange initially filed the proposed fee changes on May 1, 2023 (SR-CboeBZX-2023-032). On May 1, 2023, the Exchange withdrew that filing and submitted this proposal.

⁴ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (April 21, 2023), available at https://www.cboe.com/us/equities/market_statistics/.

members that add 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 liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁵ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁶ 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.

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six Add Volume Tiers, that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,⁷ V,⁸ or Y,⁹ where a Member reaches certain add volume-based criteria. The Exchange now proposes to introduce a seventh Add Volume Tier. The proposed criteria of Add Volume Tier 7 is as follows:

⁵ See BZX Equities Fee Schedule, Standard Rates.

⁶ Id.

⁷ Fee code B is appended to displayed orders adding liquidity to BZX in Tape B securities.

⁸ Fee code V is appended to displayed orders adding liquidity to BZX in Tape A securities.

⁹ Fee code Y is appended to displayed orders adding liquidity to BZX in Tape C securities.

- Proposed Tier 7 will provide a rebate of \$0.0031 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV¹⁰ as a percentage of TCV¹¹ $\geq 0.40\%$; and Member adds an ADV¹² $\geq 0.05\%$ of the TCV for Non-Displayed orders that yield fee codes HB,¹³ HI,¹⁴ HV¹⁵ or HY;¹⁶ and Member has a Tape B ADAV $\geq 0.65\%$ of the Tape B TCV.

Also under footnote 1 of the Fee Schedule, the Exchange currently offers five Non-Displayed Add Volume Tiers, that each provide an enhanced rebate for Members' qualifying orders yielding fee codes HB, HV or HY, where a Member reaches certain non-displayed add volume-based criteria. The Exchange now proposes to add a sixth Non-Displayed Add Volume Tier. The proposed criteria of Non-Displayed Add Volume Tier 6 is as follows:

- Proposed Non-Displayed Add Volume Tier 6 will provide a rebate of \$0.0025 per share for securities priced above \$1.00 to qualifying orders (i.e., orders yielding fee codes HB, HV or HY) where a Member has an ADAV as a percentage of TCV \geq

¹⁰ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹¹ “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.

¹² “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis.

¹³ Fee code HB is appended to non-displayed orders adding liquidity to BZX in Tape B securities.

¹⁴ Fee code HI is appended to non-displayed orders adding liquidity to BZX that receive price improvement.

¹⁵ Fee code HV is appended to non-displayed orders adding liquidity to BZX in Tape A securities.

¹⁶ Fee code HY is appended to non-displayed orders adding liquidity to BZX in Tape C securities.

0.40%; and Member adds an ADV \geq 0.05% of the TCV for Non-Displayed orders that yield fee codes HB, HI, HV or HY; and Member has a Tape B ADAV \geq 0.65% of the Tape B TCV.

The Exchange notes that its proposal to introduce a new Add Volume Tier 7 and a new Non-Displayed Add Volume Tier 6 is designed to provide Members with additional ways in which to receive an enhanced rebate if certain criteria are satisfied. The Exchange believes that by introducing proposed Add Volume Tier 7 and Non-Displayed Add Volume Tier 6, Members are incentivized to add both displayed and non-displayed volume 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.

Step-Up Tiers

Under footnote 2 of the Fee Schedule, the Exchange currently offers four Step-Up Tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B, V, and Y, where a Member reaches certain add volume-based criteria, including "growing" its volume over a certain baseline month. The Exchange is proposing to discontinue Step-Up Tiers 1 and 4, as no Members have satisfied the criteria within the past six months and the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes these tiers as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Also under footnote 2 of the Fee Schedule, the Exchange currently offers a Non-Displayed Step Up tier that provides an enhanced rebate for Members' qualifying orders yielding fee codes HB, HV, and HY, where a Member reaches certain non-displayed add volume-based criteria, including "growing" its volume over a certain baseline month. The Exchange is

proposing to discontinue the Non-Displayed Step Up Tier, as no Members have satisfied the criteria since its introduction and the Exchange no longer wishes to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Fee Codes and Associated Fees

Currently, fee codes HB, HV, and HY are appended to non-displayed orders that add liquidity and receive an enhanced rebate of \$0.00100 per share. The Exchange now proposes to reduce the amount of the enhanced rebate from \$0.00100 per share to \$0.00080 per share for orders appended with fee codes HB, HV, or HY. The purpose of lowering the rebate associated with orders appended with fee codes HB, HV, or HY is for business and competitive reasons, as the Exchange believes that reducing such rebate as proposed would decrease the Exchange's expenditures with respect to transaction pricing in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that despite the modest decrease of the rebate associated with fee codes HB, HV, and HY, the lower rebate remains competitive and is in-line with the enhanced rebate paid to non-displayed orders adding liquidity on other exchanges, including the Exchange's affiliate exchange.¹⁷

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.¹⁸ Specifically, the Exchange believes the proposed rule change is

¹⁷ See e.g., EDGX Equities Fee Schedule, Fee Codes and Associated Fees.

¹⁸ 15 U.S.C. 78f(b).

consistent with the Section 6(b)(5)¹⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)²⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)²¹ 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.

As described above, 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 proposal to adopt Add Volume Tier 7 and Non-Displayed Add Volume Tier 6 reflects 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. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,²² including the Exchange,²³ and are reasonable, equitable and non-discriminatory

¹⁹ 15 U.S.C. 78f(b)(5).

²⁰ Id.

²¹ 15 U.S.C. 78f(b)(4)

²² See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²³ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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. 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.

In particular, the Exchange believes its proposal to adopt Add Volume Tier 7 and Non-Displayed Add Volume Tier 6 is reasonable because the revised tiers will be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate or a reduced fee. The Exchange further believes the proposed Add Volume Tier 7 and Non-Displayed Add Volume Tier 6 will provide a reasonable means to encourage liquidity adding displayed orders and liquidity adding non-displayed orders, respectively, in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an additional opportunity to receive an enhanced rebate or reduced fee on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that its proposal to eliminate Step-Up Tiers 1 and 4 and the Non-Displayed Step Up Tier is reasonable because the Exchange is not required to maintain these tiers or provide Members an opportunity to receive enhanced rebates. The Exchange believes the proposal to eliminate these tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange notes

that no Members have satisfied the criteria of Step-Up Volume Tier 4 in any of the past six months. While certain Members have recently satisfied the criteria of Step-Up Volume Tier 1 and the Non-Displayed Step Up Tier, the Exchange believes these Members will have the opportunity to receive enhanced rebates under other tiers offered by the Exchange. The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain.

The Exchange believes that the proposed introduction of Add Volume Tier 7 and Non-Displayed Add Volume Tier 6 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the proposed new tiers and have the opportunity to meet the tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. 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 the new proposed tiers. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior months volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 7 and at least two Members will be able to satisfy proposed Non-Displayed Add Volume Tier 6. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate. Furthermore, the proposed rule change to eliminate Step-Up Tier 4 enables the Exchange to

redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

In addition, the Exchange believes that its proposal to reduce the enhanced rebate associated with fee codes HB, HV, and HY is reasonable, equitable, and consistent with the Act because such change is designed to decrease the Exchange's expenditures with respect to transaction pricing in order to offset some of the costs associated with the Exchange's current pricing structure, which provides various rebates for liquidity-adding orders, and the Exchange's operations generally, in a manner that is consistent with the Exchange's overall pricing philosophy of encouraging adding liquidity. The proposed lower enhanced rebate (\$0.00080 per share) is reasonable and appropriate because it represents only a modest decrease from the current enhanced rebate (\$0.00100 per share) and remains competitive with rebates offered by other exchanges, including the Exchange's affiliate exchange.²⁴ The Exchange further believes that the proposed reduction of the enhanced rebate associated with fee codes HB, HV, and HY is not unfairly discriminatory because it applies to all Members equally, in that all Members will receive the lower rebate if their orders are appended with fee code HB, HV, or HY.

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 changes 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 changes

²⁴ Supra note 16.

further 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.”

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed introduction of Add Volume Tier 7 and Non-Displayed Add Volume Tier 6 will apply to all Members equally in that all Members are eligible for each of the Tiers, have a reasonable opportunity to meet the Tiers’ criteria and will receive the enhanced rebate on their qualifying orders if such criteria are met. In addition, the proposed change to eliminate Step-Up Tiers 1 and 4 and the Non-Displayed Step Up Tier and the proposed reduction of the enhanced rebate associated with fee codes HB, HV, and HY will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member and all Members will be subject to the lower enhanced rebate for orders appended with fee code HB, HV, or HY. The Exchange does not believe the proposed changes burden competition, but rather, enhances competition as it is intended to increase the competitiveness of BZX by adopting pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for 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 changes 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 other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.²⁵ 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.”²⁶ 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

²⁵ Supra note 3.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²⁷ 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.

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 Act²⁸ and paragraph (f) of Rule 19b-4²⁹ 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:

²⁷ 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)).

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 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-2023-033 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-2023-033. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to File Number SR-CboeBZX-2023-033, 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.³⁰

Sherry R. Haywood

Assistant Secretary

³⁰ 17 CFR 200.30-3(a)(12).