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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86464; File No. SR-CboeBZX-2019-064]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule Applicable to Members and non-Members of the Exchange Pursuant to BZX Rules 15.1(a) and (c)

July 24, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 11, 2019, 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members⁴ of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is attached [sic] as Exhibit 5.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

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 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") to adopt a new Total Volume tier.⁵

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 several equities venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a "Maker-Taker" model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's Fees Schedule sets forth the standard rebates

⁵ The Exchange initially filed the proposed fee change on July 1, 2019 (SR-CboeBZX-2019-061). On business date July 11, 2019, the Exchange withdrew that filing and submitted this filing.

and rates applied per share for orders that provide and remove liquidity, respectively.

Particularly, for securities at or above \$1.00, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity⁶ and assesses a fee of \$0.0025 per share for orders that remove liquidity. 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.

For example, pursuant to footnote 1 of the Fees Schedule, the Exchange offers Add Volume tiers that provide Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative ADAV⁷ as a percentage of the TCV.⁸ Under the current Add Volume tiers, a Member receives a per share rebate for qualifying orders which yield fee codes B,⁹ V,¹⁰ or Y¹¹ The Exchange notes that the Add Volume tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, thereby contributing to a deeper and more liquid market to the benefit of all

⁶ Displayed Orders which add liquidity in Tape B securities receive a standard rebate of \$0.0025 per share.

⁷ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

⁸ “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.

⁹ Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

¹⁰ Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

¹¹ Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

market participants. The Exchange also notes that it currently does not provide for a similar tier that accounts for a Member's total volume (both liquidity adding and removing orders). The Exchange now proposes to add such a tier to its fee schedule.

Specifically, the Exchange proposes to add a new Total Volume tier under footnote 3 which would provide Members an additional opportunity to qualify for an enhanced rebate on their orders that add liquidity (i.e. those yielding fee code B, V, or Y). Under the proposed Total Volume tier, a Member would receive a rebate of \$0.0033 per share for their qualifying orders which yield fee codes B, V, or Y where the Member has an ADV¹² that is greater or equal to 1.40% of the TCV. Members that achieve the proposed Total Volume tier must therefore increase their overall order flow, both adding and removing liquidity, as a percentage greater than or equal to 1.40% of the TCV. The Exchange believes the proposed enhanced rebates for both liquidity adding and removing orders incentivizes increased overall order flow to the Book. The proposed tier provides both liquidity providing Members and Members executing on the Exchange an additional opportunity to receive a rebate. It is designed to provide Members that provide displayed liquidity on the Exchange a further incentive to contribute to a deeper, more liquid market, and Members executing on the Exchange an incentive to increase transactions and take such execution opportunities provided by such increased liquidity. The Exchange believes that this, in turn, benefits all Members by contributing towards a robust and well-balanced market ecosystem. The Exchange notes the proposed tier is available to all Members.

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

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ 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)¹⁵ 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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 proposed rule change 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.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive an enhanced rebate by reaching the proposed

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ 15 U.S.C. 78f(b)(5).

threshold by means of liquidity adding and removing orders. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁶, including the Exchange¹⁷, and are reasonable, equitable and non-discriminatory 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. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.¹⁸

Moreover, the Exchange believes the proposed Total Volume tier is a reasonable means to encourage Members to increase their overall order flow to the Exchange based on increasing their daily total volume (ADV) above a percentage of the total volume (TCV). Particularly, the Exchange believes that adopting a Total Volume tier based on a Member's adding and removing

¹⁶ See e.g., The Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118, which generally provides for rebates (or discounts) for participant adding and removing orders that together reach certain thresholds of the TCV.

¹⁷ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 1, Add Volume Tier, Market Depth Tier, which has an ADV component to its required criteria.

¹⁸ See e.g., The Nasdaq Stock Market LLC Rules, Equity 7, Sec. 118. Particularly, Nasdaq offers a rebate of \$0.0029 per share where a Member has (i) shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.70% of Consolidated Volume during the month, and (ii) shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.50% of Consolidated Volume during the month.

orders will encourage liquidity providing Members to provide for a deeper, more liquid market, and Members executing on the Exchange to increase transactions and take such execution opportunities provided by increased liquidity. In turn, these increases benefit all Members by contributing towards a robust and well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, providing greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The proposed rebate amount also does not represent a significant departure from the rebates currently offered, or required criteria, under the Exchange's existing tiers. For example, the rebate amount offered under existing Add Volume Tier 6 (also applicable to orders yielding fee code B, V, or Y), for which a Member must have a daily volume add (ADAV) of 1.25% or greater than the TCV to receive a rebate of \$0.0032 per share. The Exchange believes the proposed tier is in line with this existing tier, as the natural next highest rebate for a related Add Volume tier would be \$0.0033 for daily add volume at a percentage anywhere greater than 1.25% of the TCV. The Exchange, however, notes that it instead proposes this same rebate for reaching a daily add or remove volume at percentage greater than 1.25% (i.e. 1.40%, as proposed), which, as stated, incentivizes overall order flow (liquidity providing and liquidity taking orders) to the Exchange.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed Total Volume tier, and would have the opportunity to meet the tier's criteria and would receive the proposed rebate if such criteria is met. Given previous months' data, the Exchange notes that none of its Members would have reached this proposed tier in recent past months had the proposed tier been

in place. Accordingly, the proposed tier is designed as an incentive applicable to all Members to submit additional order flow in order to meet the new criteria and achieve the proposed rebate. 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 for this tier. However, the Exchange believes multiple Member types will be able to achieve the proposed tier, including liquidity providers and broker-dealers, each providing distinct types of order flow to the Exchange to the benefit of all market participants. For example, broker-dealer customer order flow provides more trading opportunities, which attracts Market Makers. Increased Market Maker activity facilitates tighter spreads which potentially increases order flow from other market participants. The Exchange also notes that the proposed tier will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would uniformly apply to all Members that meet the required criteria under proposed Total Volume tier.

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 intramarket or intermarket 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 change 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 change furthers 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.”¹⁹

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier’s criteria and will all receive the proposed rebate if such criteria is met. Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier would incentivize market participants to direct both liquidity providing and executable order flow to the Exchange. Greater overall order flow benefits all market participants on the Exchange by providing more trading opportunities and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem, which benefits all market participants.

Next, the Exchange believes the proposed rule change 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 12 other equities exchanges and off-exchange venues, including 32 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 23% of the market

¹⁹ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

share.²⁰ Therefore, no exchange possesses significant pricing power in the execution of option [sic] 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.”²¹ 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 for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’....”²² 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.

²⁰ See Cboe Global Markets U.S. Equities Market Volume Summary (June 28, 2019), available at http://markets.cboe.com/us/equities/market_share/.

²¹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²² *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)).

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

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 Act²³ and paragraph (f) of Rule 19b-4²⁴ 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-2019-064 on the subject line.

²³ 15 U.S.C. 78s(b)(3)(A).

²⁴ 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-2019-064. 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-2019-064 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.²⁵

²⁵ 17 CFR 200.30-3(a)(12).

Jill M. Peterson,

Assistant Secretary.

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