



8011-01

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87547; File No. SR-CboeBZX-2019-095]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Definition of the Final Last Sale Eligible Trade

November 15, 2019.

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 November 12, 2019, Cboe BZX Exchange, Inc. (“BZX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II 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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. 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 purpose of the proposed rule change is to amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The FLSET is used by the Exchange for a number of important purposes related to auctions in BZX-listed securities. For example, the FLSET sets the Halt Auction Reference Price for Halt Auctions following Non-LULD Regulatory Halts,³ and, in some cases, becomes the BZX Official Closing Price for a security where there is no Closing Auction, or where there is a Closing Auction but only an odd lot quantity is executed.⁴ Today, pursuant to BZX Rule 11.23(a)(9), the last trade occurring during Regular Trading Hours on the Exchange sets the FLSET if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. The last trade

³ See BZX Rule 11.23(d)(2)(C)(i)(B).

⁴ See BZX Rule 11.23(c)(2)(B), (B)(ii)(a). For BZX-listed corporate securities, the FLSET would be the BZX Official Closing price if there is no Closing Auction. If there is no round lot Closing Auction in a BZX-listed ETP, the FLSET would be the BZX Official Closing Price if a trade that would qualify as the FLSET occurred within the last five minutes before the end of Regular Trading Hours, or if there is no such qualifying trade but a time-weighted average price of the NBBO midpoint cannot be determined pursuant to BZX Rule 11.23(c)(2)(B)(ii)(b).

executed on BZX during Regular Trading Hours could be for a round lot or odd lot quantity. The Exchange believes, however, that it is undesirable for an odd lot execution that may be for an economically insignificant notional value to set the FLSET. The Exchange therefore proposes to amend BZX Rule 11.23(a)(9) such that the FLSET would be set by the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted.

In addition, BZX Rule 11.23(a)(9) further provides that where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. The Exchange proposes two changes to this language. First, the Exchange proposes to replace language that references “BZX Exchange” with simply “the Exchange” consistent with the defined term codified in BZX Rule 1.5(k) and used throughout the rulebook. Second, the Exchange proposes to amend the rule such that the last round lot trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. Although the Exchange has generally interpreted this requirement to convey that the last round lot trade reported to the consolidated tape, i.e., consolidated last sale eligible trade, would set the FLSET, it is currently possible for an odd lot trade that was executed in the Exchange’s Opening Auction to set the FLSET in limited circumstances where the opening print was the last reported trade. Thus, adding this language to the rule would both increase clarity now that odd lot trades are

reported to the consolidated tape,⁵ and ensure that odd lot Opening Auctions would no longer be used to set the FLSET. Further, the proposed change would assist in conforming the descriptions in the rule given the changes previously discussed to the FLSET definition to explicitly reference round lot trades in the first part of the rule. As is the case today, if there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day would continue to be used.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁶ in general, and Section 6(b)(5) of the Act,⁷ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The FLSET is the last sale formulation designed for use in BZX auctions pursuant to BZX Rule 11.23, and is used for a number of purposes including to set various reference prices, and in some cases to set the BZX Official Closing Price in the absence of a Closing Auction where sufficient size is executed to set the closing price. Given the importance of the FLSET to the Exchange's auction processes, the Exchange believes that it is consistent with the public interest and the protection of investors to eliminate odd lot executions from the FLSET

⁵ Historically, odd lot trades were not reported to the consolidated tape. In 2013, the CTA and UTP Plans were amended such that odd lot trades would be reported but would continue to be ineligible to set the consolidated last sale. See Securities Exchange Act Release Nos. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05), 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (S7-24-89).

⁶ 15 U.S.C. § 78f(b).

⁷ 15 U.S.C. § 78f(b)(5).

determination. Today, as discussed in the purpose section of this proposed rule change, only round lot executions from other exchanges are eligible to establish the FLSET used by BZX but an odd lot trade on BZX would nevertheless be FLSET eligible if executed in the last one second, or in limited circumstances where an odd lot Opening Auction sets the last reported trade. Further, this may be true whether or not there is a round lot execution on the Exchange or another exchange that would otherwise have set the FLSET, and that would have been for a more economically significant notional value. The consolidated last sale price disseminated pursuant to the CTA and UTP Plans similarly disregard odd lot executions in an effort to ensure that such last sale prices remain economically significant, even though the CTA and UTP Plans otherwise provide transparency into odd lot executions. The Exchange believes that it is similarly appropriate to limit the Exchange's last sale calculation, i.e., the FLSET, to round lot executions to ensure that this value represents an economically significant last sale price to be utilized for the Exchange's auction processes. With this change, the Exchange's FLSET calculation will also be more aligned with other equities exchanges, such as NYSE Arca, Inc. ("Arca") that also disregard odd lot executions in similar situations.⁸ Arca's auction processes are not identical to those of the Exchange – e.g., Arca uses a weighting of the consolidated last sale eligible trade and the time weighted average price of the NBBO midpoint to set the official closing price in certain circumstances.⁹ Nevertheless, Arca similarly excludes odd lot executions from its last sale formulation where relevant to its auction process. The Exchange believes that a similar

⁸ For example, the last consolidated round lot price is ordinarily used to set the reference price for trading halt auctions on Arca. See Arca Rule 7.35-E(a)(8)(A). Similarly, the consolidated last sale eligible trade, which as previously explained must be for a round lot, may be used in determining the official closing price on Arca. See Arca Rule 1.1(II)(1).

⁹ See Arca Rule 1.1(II)(1).

restriction would be appropriate for its FLSET formulation, notwithstanding any differences in the auction processes employed by each exchange.

The Exchange also notes that clarifying change to replace the term “BZX Exchange” with “the Exchange” as defined pursuant to the Exchange’s rules is non-substantive and is being made to enhance the readability of the Exchange’s rules. The Exchange therefore believes that this change is consistent with the protection of investors and the public interest.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the FLSET continues to be a meaningful value to be used for auctions in BZX-listed securities. The Exchange believes the proposed changes would improve the experience of members and investors trading on the Exchange without imposing any significant burden on competition. In today’s highly competitive market, the Exchange must continually refine its offerings to ensure the best trading experience for members and investors. Rather than burden competition, the Exchange believes that the proposed rule change is evidence of robust competition between equities markets that benefits the industry.

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

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ Because the proposed rule change does not:

¹⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

¹¹ 17 CFR 240.19b-4(f)(6).

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹² and Rule 19b-4(f)(6) thereunder.¹³

A proposed rule change filed under Rule 19b-4(f)(6)¹⁴ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁵ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative immediately. In its request, the Exchange states that it currently uses a combination of both round lot and odd lot trades in calculating the FLSET while other exchanges disregard odd lot executions in similar situations, and expresses its belief that it is desirable to limit the FLSET to round lot executions as it would help to ensure that the FLSET represents an economically significant last sale price to be utilized for its auction processes. The Exchange states that waiver of the operative delay would allow it to promptly amend its rules to ensure that only round lot trades are eligible to set the FLSET, to the benefit of members and investors, and is therefore consistent with the protection of investors and the public interest. The Commission believes that waiving the 30-day

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6)(iii).

operative delay is consistent with the protection of investors and the public interest, and therefore hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁶

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 shall 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-2019-095 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 No. SR-CboeBZX-2019-095. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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 No. SR-CboeBZX-2019-095, 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.¹⁷

¹⁷ 17 CFR 200.30-3(a)(12), (59).

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 2019-25208 Filed: 11/20/2019 8:45 am; Publication Date: 11/21/2019]