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SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88983; File No. SR-CboeBZX-2020-043]

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

June 1, 2020

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 May 19, 2020, 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,” “Cboe,” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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.

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 Exchange proposes to amend its fee schedule applicable to its equities trading platform. Specifically, the Exchange proposes to amend the existing Tape B Volume and Quoting Tier, add a new Tape B Volume and Quoting Tier, make a cleanup change to the introductory language under the Tape B Volume and Quoting Tiers, and to add a new LMM Add Volume Tier, effective May 1, 2020.³

The Exchange first notes that its listing business 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. The proposed rule changes reflect a competitive pricing

³ The Exchange initially filed the proposed fee changes on May 1, 2020 (SR-CboeBZX-2020-039). On May 12, 2020, the Exchange withdrew that filing and submitted a subsequent filing (SR-CboeBZX-2020-041). On May 19, 2020, the Exchange withdrew that filing and submitted this proposal.

structure designed to incentivize market participants to enroll in LMP Securities⁴ and participate as LMMs in the Exchange's LMM Program,⁵ 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.

Tape B Volume and Quoting Tiers

The Exchange currently offers one Tape B Volume and Quoting Tier under footnote 13, which provides an additional rebate of \$0.0001 per share for orders that add liquidity in Tape B securities where a Member is enrolled in at least 100 LMP Securities, at least 10 of which must be BZX-listed, for which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) Member has an NBBO Time⁶ greater than or equal to 15% or NBBO Size Time⁷ is greater than or equal to 25%; and (2) Member has a Displayed Size Time⁸ greater than or equal to 90%. All Members are

⁴ "LMP Securities" means a list of securities included in the Liquidity Management Program, the universe of which will be determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities will include all Cboe-listed ETPs and certain non-Cboe-listed ETPs for which the Exchange wants to incentivize Members to provide enhanced market quality. All Cboe-listed securities will be LMP Securities immediately upon listing on the Exchange. The Exchange will not remove a security from the list of LMP Securities without 30 days prior notice. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁵ See Securities Exchange Act Release No. 86213 (June 27, 2019), 84 FR 31951 (July 3, 2019) (the "Original LMM Filing").

⁶ "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. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁷ "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. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁸ "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

eligible to enroll in LMP Securities and are eligible for the current Tape B Volume and Quoting Tier. Such rebates are applicable to orders that add liquidity which are appended with fee code B. The Exchange proposes to make several changes to the Tape B Volume and Quoting Tier and to add a second tier.

First, the Exchange proposes to require that a Member is enrolled in and meets the requirements for at least 50 BZX-listed LMP Securities in order to receive the additional Tier 1 rebate. This marks a reduction in the total number of LMP Securities that a Member must be enrolled in and meet the requirements for (from 100 to 50) and an increase in the number of BZX-listed LMP Securities that a Member must be enrolled in and meet the requirements for (from 10 to 50).⁹ Second, the Exchange is proposing to additionally require that a Member adds a Tape B ADV¹⁰ of greater than or equal to 0.15% of the TCV¹¹ in order to receive the additional Tier 1 rebate.

The Exchange is also proposing to add a Tier 2 rebate to the Tape B Volume and Quoting Tiers where a Member is enrolled in at least 100 BZX-listed LMP Securities for

more than 2% away from the NBB and NBO, respectively. See Cboe BZX U.S. Equities Exchange Fee Schedule.

⁹ The Exchange notes that all BZX-listed securities are by definition LMP Securities.

¹⁰ "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADV is calculated on a monthly basis. The Exchange excludes from its calculation of ADV shares added or removed on any day that the Exchange's system experiences a disruption that lasts for more than 60 minutes during regular trading hours, on any day with a scheduled early market close and on the last Friday in June (the "Russell Reconstitution Day"). Routed shares are not included in ADAV or ADV calculation.

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. The Exchange excludes from its calculation of TCV volume on any day that the Exchange experiences an Exchange System Disruption, on any day with a scheduled early market close and the Russell Reconstitution Day.

which it meets the following criteria for at least 50% of the trading days in the applicable month: (1) Member has an NBBO Time greater than or equal to 15% or an NBBO Size Time greater than or equal to 25%; and (2) Member has a Displayed Size Time greater than or equal to 90%; and (ii) Member adds a Tape B ADV greater than or equal to 0.30% of the TCV.

Finally, the Exchange is also proposing to make a cleanup change to eliminate the introductory language under footnote 13 that reads: “LMMs in BZX-listed securities will receive the following additional rebate when adding displayed liquidity in all Tape B securities, except that such additional rebates will not be applied to the rebates set forth in footnote 14 part A.” The Exchange is proposing to delete this language because it does not apply to the current LMM Liquidity Provision Rates. Specifically, prior to the Exchange implementing the new LMM Liquidity Provision Rates as part of the Original LMM Filing, the Exchange offered enhanced rebates to LMMs for added liquidity on a per transaction basis in their LMM Securities. The introductory language was intended to make clear that LMMs were not eligible for the Tape B Volume Tier in addition to the enhanced LMM rebates.¹² Since the implementation of the Original LMM Filing, LMMs receive a daily payment for meeting certain Minimum Performance Standards instead of an enhanced rebate (as further described below) and, as such, the language is no longer applicable.

LMM Add Volume Tier

Under the LMM Program, the Exchange offers daily incentives for LMMs securities listed on the Exchange for which the LMM meets certain Minimum

¹² See Securities Exchange Act Release No. 79064 (October 6, 2016), 81 FR 70718 (October 13, 2016).

Performance Standards.¹³ Such daily incentives are determined based on the number of Cboe-listed securities for which the LMM meets such Minimum Performance Standards and the average auction volume across such securities. Generally speaking, the more LMM Securities¹⁴ for which the LMM meets the Minimum Performance Standards and the higher the auction volume across those securities, the greater the total daily payment to the LMM.

In order to further incentivize Members to enroll and participate in the LMM Program, the Exchange is also proposing to add a new LMM Add Volume Tier. Under this proposed new tier, LMMs in BZX-listed securities will receive an additional \$0.0001 rebate per share for adding displayed liquidity where the LMM: (1) adds an ADV greater than or equal to 0.20% of the TCV; (2) has an average aggregate daily auction volume in LMM Securities greater than or equal to 500,000; and (3) is enrolled in at least 75 LMM Securities.

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

¹³ As defined in Rule 11.8(e)(1)(E), the term “Minimum Performance Standards” means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

¹⁴ As defined in Rule 11.8(e)(1)(D), the term “LMM Security” means a Listed Security that has an LMM. As defined in Rule 11.8(e)(1)(B), the term “Listed Security” means any ETP or any Primary Equity Security or Closed-End Fund listed on the Exchange pursuant to Rule 14.8 or 14.9.

requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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)¹⁷ [sic] 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. The Exchange also 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 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 changes reflect a competitive pricing structure designed to incentivize market participants to enroll in LMP Securities and participate as LMMs in the Exchange's LMM Program, 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.

Tape B Volume and Quoting Tiers

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ Id.

The Exchange believes that the proposed changes to the Tape B Volume and Quoting Tiers are 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 frequently¹⁸ for numerous reasons, including market quality. This proposal is intended to help the Exchange compete as an ETP listing venue. Specifically, the Exchange believes that the proposal is reasonable because it believes that increasing the number of BZX-listed LMP Securities from 10 to 50 will ensure that Members are meeting the NBBO Time or NBBO Size Time and the Displayed Size Time requirements in BZX-listed securities rather than in other LMP Securities will incentivize enhanced market quality in BZX-listed ETPs. Further, adding the requirement that a Member adds a Tape B ADV greater than or equal to 0.15% of the TCW will incentivize Members to transact in Tape B securities, which includes all BZX-listed securities, on the Exchange. Adding Tier 2 with an increased additional rebate for Members that are enrolled in at least 100 BZX-listed LMP Securities and add a Tape B ADV greater than or equal to 0.30% of the TCW (while applying the same NBBO Time or NBBO Size Time and Displayed Size Time requirements as Tier 1) will provide further incentive for Members to enroll in additional BZX-listed LMP Securities and transact in Tape B Securities. The combination of the two requirements in both Tier 1 and Tier 2 will encourage both quoting and executions on the Exchange in BZX-listed securities, which the Exchange

¹⁸ For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. See <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf>.

believes is both reasonable and equitable because it 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. Further, the Exchange believes that any negative impact to non-BZX-listed LMP Securities is not unreasonable and will be outweighed by the positive impact to the Exchange's listing program for several reasons. As noted throughout, the listing business operates in a highly-competitive market in which competing listing venues offer liquidity provision incentive programs for their own securities,¹⁹ similar to the LMM Program and the Tape B Quoting Tiers. To the extent that the market quality in the security is negatively impacted, competitive forces would generally dictate that the primary listing venue enhance their own liquidity provision programs or that the security would transfer to a different primary listing venue.

The Exchange believes that the proposal 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. The Exchange anticipates at least three and as many as eight firms will meet the Tape B Volume and Quoting Tiers 1 and 2. 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 Tiers must meet the proposed quoting and execution standards in order to receive the enhanced rebates, as outlined above. Where a Member does not meet the requirements, they will not receive the enhanced rebates.

¹⁹ See NYSE Arca, Inc. Rule 6.82-O related to Lead Market Makers and Nasdaq Stock Market LLC Section 114 related to the Designated Liquidity Provider Program.

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.

Finally, the Exchange believes that the proposal to eliminate the introductory language under the Tape B Volume Tiers is reasonable, equitable, and non-discriminatory in that it is designed to make the fee schedule clearer because it is eliminating old language that is no longer applicable.

LMM Add Volume Tier

The Exchange believes that the proposed addition of the LMM Add Volume Tier is consistent with the act and represents a reasonable, equitable, and not unfairly discriminatory means to incentivize liquidity provision in BZX-listed securities. Specifically, the Exchange believes that the proposal is reasonable, equitable, and not unfairly discriminatory to offer the LMM Add Volume Tier to LMMs and not other Members because it will enhance market quality in Cboe-listed securities by incentivizing LMMs to take on additional securities listed on the Exchange (by requiring both a minimum Average Aggregate Daily Auction Volume in LMM Securities of greater than or equal to 500,000 and enrollment in at least 75 LMM Securities) and encouraging liquidity provision on the Exchange (by requiring that a Member adds an ADV of greater than or equal to 0.20% of TCV). While the proposed enhanced rebate applies only to LMMs, the Exchange believes that the proposal is equitable and not unreasonably discriminatory because registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, such LMMs must meet rigorous Minimum Performance

Standards²⁰ and, where an LMM does not meet the Minimum Performance Standards for three out of the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular LMM qualifying for the proposed tier, the Exchange anticipates at least one LMM meeting, or being reasonably able to meet, the proposed criteria; however, the proposed tier is open to any LMM that satisfies the tier's criteria. The Exchange believes that the proposed tier could provide an incentive for other Members to enroll as an LMM, to take on additional LMM Securities, and to add additional liquidity on the Exchange to qualify for the proposed tier.

The Exchange believes that it is fair and reasonable to offer enhanced rebates to LMMs that meet the proposed tier because of the significant commitment to the Exchange's LMM Program and liquidity provision on the Exchange made by such LMM in order to meet the tier. The Exchange intends to implement the enhanced rebate as a means to incentivize Members to both enroll and participate in the LMM Program and then to further take on additional LMM Securities and believes that this new tier combined with the existing structure of the LMM Program will have such an effect. As such, the Exchange believes that the proposal represents an equitable allocation of payments.

²⁰ As defined in Rule 11.8(e)(1)(D), the term "Minimum Performance Standards" means a set of standards applicable to an LMM that may be determined from time to time by the Exchange. Such standards will vary between LMM Securities depending on the price, liquidity, and volatility of the LMM Security in which the LMM is registered. The performance measurements will include: (A) percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. For additional detail, see Original LMM Filing.

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 competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed change 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 to become LMMs in BZX-listed 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 frequently²¹ 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. Registration as an LMM is available equally to all Members and allocation of listed securities between LMMs is governed by Exchange Rule 11.8(e)(2). Further, if an LMM does not meet the Minimum Performance Standards for three out of

²¹ For example, 16 ETPs transferred their listings to the Exchange on May 13, 2019. See <http://ir.cboe.com/~media/Files/C/CBOE-IR-V2/press-release/2019/cboe-welcomes-16-barclays-etns.pdf>.

the past four months, the LMM is subject to forfeiture of LMM status for that LMM Security, at the Exchange's discretion.

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

No written comments were either solicited or received.

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 Act²² and paragraph (f) of Rule 19b-4²³ 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-043 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-2020-043. 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, D.C. 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-2020-043 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).

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