

Required fields are shown with yellow backgrounds and asterisks.

Filing by Cboe BZX Exchange, Inc.  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to add a new optional order type modifier to be known as Non-Displayed Swap.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Anders      Last Name \* Franzon  
 Title \* SVP, Deputy General Counsel and Chief Legal Officer,Cboe U.S. Securities Exchanges  
 E-mail \* afranzon@cboe.com  
 Telephone \* (913) 815-7154      Fax

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 06/18/2018      SVP, Deputy General Counsel and Chief Legal Officer,Cboe U.S. Securities Exchanges  
 By Anders Franzon      afranzon@cboe.com  
 (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

afranzon@cboe.com

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of Cboe EDGX Exchange, Inc. (“EDGX”)<sup>3</sup> and substantially similar to the rules of the Nasdaq Stock Market LLC (“Nasdaq”)<sup>4</sup> and NYSE Arca, Inc. (“Arca”).<sup>5</sup> Therefore, the Exchange has designated this proposal as “non-controversial” and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>6</sup>

The text of the proposed rule change is available on the Exchange’s website at

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See EDGX Rules 11.6(n)(7), 11.8(b)(7) and 11.8(d)(5); see also Securities Exchange Act Release No. 80841 (June 1, 2017), 82 FR 26559 (June 7, 2017), (Notice of Filing and Immediate Effectiveness To Add a New Optional Order Instruction Known as Non-Displayed Swap).

<sup>4</sup> See Nasdaq Rule 4703(m) (defining the Trade Now order modifier); see also Securities Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of Proposed Rule change to Amend Rule 4702 and Rule 4703 to Add a “Trade Now” Instruction to Certain Order Types).

<sup>5</sup> See Arca Rule 7.31-E(d)(2)(B) (describing the Non-Display Remove Modifier); see also Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (Order Approving Proposed Rule change Adopting New Equity Trading Rules Relating to Orders and Modifiers and Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange’s New Trading Technology Platform).

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii).

[markets.cboe.com](http://markets.cboe.com), at the Exchange's principal office and at the Public Reference Room of the Commission.

(b) The Exchange does not believe that the proposed rule change will have any direct or significant indirect effect on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange's President (or designee) pursuant to delegated authority approved the proposed rule change on June 13, 2018.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Anders Franzon, Senior Vice President, Deputy General Counsel and Chief Legal Officer, (913) 815-7154.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The Exchange proposes to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of EDGX<sup>7</sup> and substantially similar to the rules of Nasdaq and Arca.<sup>8</sup>

The proposed Non-Displayed Swap ("NDS") instruction would provide resting limit orders that are not displayed on the Exchange<sup>9</sup> and Mid-Point Peg Orders resting on

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<sup>7</sup> See supra note 3.

<sup>8</sup> See supra notes 4 and 5.

<sup>9</sup> See Exchange Rule 11.9(c)(11).

the BZX Book<sup>10</sup> with a greater ability to receive an execution when that resting order is locked by an incoming order (e.g., the price of the resting non-displayed order is equal to the price of the incoming order that is to be placed on the BZX Book). The NDS instruction would be an optional order instruction that would allow Users<sup>11</sup> to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. NDS would be defined as an instruction on an order resting on the BZX Book that, when locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to paragraph (c)(6) of Exchange Rule 11.9,<sup>12</sup> causes such order to be converted to an executable order that removes liquidity against such incoming order. An NDS instruction would only be eligible for inclusion on a non-displayed limit order or a Mid-Point Peg Order. An order with a NDS instruction would not be eligible for routing pursuant to Exchange Rule 11.13, Order Execution and Routing. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book (though such lock would not be displayed

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<sup>10</sup> See Exchange Rule 1.5(e).

<sup>11</sup> See Exchange Rule 1.5(cc).

<sup>12</sup> Under Exchange Rule 11.9(c)(6), a BZX Post Only Order will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below \$1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

by the Exchange)<sup>13</sup> by facilitating the execution of orders that would otherwise lock each other.

The following example illustrates the operation of an order with a NDS instruction. Assume the National Best Bid and Offer is \$10.00 by \$10.04. There is a non-displayed limit order to buy resting on the BZX Book at \$10.03. A BZX Post Only Order to sell priced at \$10.03 is entered. Under current behavior, the incoming sell order marked as Post Only would post to the BZX Book because it would not receive sufficient price improvement.<sup>14</sup> This would result in the BZX Book being internally locked.<sup>15</sup> As proposed, if the non-displayed limit order to buy also included a NDS instruction, the orders would instead execute against each other at \$10.03, with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming BZX Post Only Order to sell becoming the liquidity provider.

Assume the same facts as above, but that a non-displayed limit order to buy at \$10.03 (“Order A”) is also resting on the BZX Book with time priority ahead of the non-displayed limit order mentioned above (“Order B”). Like above, a BZX Post Only Order to sell priced at \$10.03 is entered. Under current behavior, the incoming BZX Post Only Order to sell would post to the BZX Book because the value of such execution against the resting buy interest when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the BZX Book and subsequently provided

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<sup>13</sup> See Exchange Rule 11.13(a)(4)(C).

<sup>14</sup> Id.

<sup>15</sup> In the event the incoming order with a Post Only instruction was to be displayed, it would post and display at \$10.03 and the resting buy order with a Non-Displayed instruction would not execute against it or subsequent incoming sell orders at \$10.03 for so long as the sell order was displayed on the Exchange. See Exchange Rule 11.13(a)(4)(C) and (D).

liquidity, including the applicable fees charged or rebates provided. As proposed, if Order B also included a NDS instruction, the incoming sell order would execute against Order B and such order would become the remover of liquidity and the BZX Post Only Order to sell would become the liquidity provider. In such case, Order A cedes time priority to Order B because Order A did not also include a NDS instruction and thus the User that submitted Order A did not indicate the preference to be treated as the remover of liquidity in favor of an execution; instead, by not using NDS, a User indicates the preference to remain posted on the BZX Book as a liquidity provider.<sup>16</sup> However, if the incoming sell order was priced at \$10.02, it would receive sufficient price improvement to execute upon entry against all resting buy limit orders in time priority at \$10.03.<sup>17</sup>

If the order with a NDS instruction is only partially executed, the unexecuted portion of that order remains on the BZX Book and maintains its priority, as is the case today for an order that is partially executed and not cancelled by the User.<sup>18</sup> The Exchange is proposing to make the NDS instruction available to limit orders<sup>19</sup> that are not displayed on the Exchange<sup>20</sup> and MidPoint Peg Orders.<sup>21</sup> Because the NDS

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<sup>16</sup> Should the limit order to buy at \$10.03 with time priority (i.e., Order A) be displayed on the BZX Book, the incoming BZX Post Only Order to sell at \$10.03 will not execute against the non-displayed buy order with a NDS instruction because displayed orders have priority over non-displayed orders. In such a case, the incoming limit order would be handled as it is today in accordance with existing Exchange rules. See, e.g., Exchange Rules 11.9 and 11.13(a).

<sup>17</sup> The execution occurs here because the value of the execution against the buy order when removing liquidity exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. See supra note 12.

<sup>18</sup> See Exchange Rule 11.12(a)(5).

<sup>19</sup> See Exchange Rule 11.9(a)(1).

<sup>20</sup> See Exchange Rule 11.9(c)(11).

instruction would be only available to limit orders not displayed on the Exchange and to MidPoint Peg Orders, the NDS instruction would not be available to other order types provided by the Exchange under its Rule 11.9, such as BZX Market Orders, Reserve Orders, and Market Maker Peg Orders,<sup>22</sup> as the NDS instruction would be inconsistent with the use of those order types. The NDS instruction could, however, be combined with other instructions also available to non-displayed limit orders, such as the Minimum Quantity Order instruction, the Primary Pegged Order instruction, the Market Pegged Order instruction or the Discretionary Order instruction.<sup>23</sup>

The Exchange notes that similar functionality exists on Nasdaq and Arca. Nasdaq refers to their functionality as the “Trade Now” instruction<sup>24</sup> and Arca refers to their functionality as the “Non-Display Remove Modifier”.<sup>25</sup> On Arca, a Limit Non-Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the remover of

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<sup>21</sup> See Exchange Rule 11.9(c)(9).

<sup>22</sup> See Exchange Rules 11.9(a)(2), 11.9(c)(1) and 11.9(c)(16), respectively.

<sup>23</sup> See Exchange Rules 11.9(c)(5), 11.9(c)(8)(A), 11.9(c)(8)(B) and 11.9(c)(10), respectively.

<sup>24</sup> See Nasdaq Rule 4703(m). See also Securities and Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (SR-Nasdaq-2016-156) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4703 to add a “Trade Now” Instruction to Certain Order Types).

<sup>25</sup> See Arca Rule 7.31-E(d)(2)(B). See also Securities and Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto, Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange’s New Trading Technology Platform) (including the Non-Display Remove Modifier).

liquidity with an incoming Adding Liquidity Only Order (“ALO Order”) to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.<sup>26</sup> On Nasdaq, Trade Now is an order attribute that allows a resting order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking order as a liquidity taker, and any remaining shares of the resting order will remain posted on the Nasdaq Book with the same priority.<sup>27</sup> Nasdaq requires the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca’s Non-Display Remove Modifier.

(b) Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>28</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>29</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open

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<sup>26</sup> See Arca Rule 7.31-E(d)(2)(b).

<sup>27</sup> Arca provides their Non-Display Remove Modifier to their Mid-Point Liquidity Orders (“MPL Orders”) designated Day and MPL-ALO Orders and Arca Only Orders. Nasdaq’s Trade Now functionality is available to Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders. To the extent the NDS instruction is only available to non-displayed limit orders and MidPoint Peg Orders, the Exchange notes that the NDS instruction will apply to different order types than Arca’s Non-Display Remove Modifier and Nasdaq’s Trade Now functionality.

<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

market and a national market system and, in general, to protect investors and the public interest by offering Users optional functionality that will facilitate the execution of orders that would otherwise remain unexecuted, thereby increasing the efficient functioning of the Exchange. The NDS instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book by facilitating the execution of orders that would otherwise post, or remain posted, to the BZX Book.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the Exchange believes the proposed rule change promotes competition because it will enable the Exchange to offer functionality substantially similar to that offered by Nasdaq and Arca (in addition to the fact that such functionality is identical to that already offered by the Exchange's affiliate, EDGX).<sup>30</sup> Therefore, the Exchange does not believe the proposed rule change will result in any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As the NDS feature will be equally available to all Users, the Exchange does not believe the proposed rule change will result in any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

5. 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.

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<sup>30</sup> See supra notes 3-5.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)<sup>31</sup> of the Act and Rule 19b-4(f)(6)<sup>32</sup> thereunder. The proposed rule change effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for thirty (30) days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its 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.<sup>33</sup>

The Exchange believes that the proposed rule change meets the criteria of subparagraph (f)(6) of Rule 19b-4<sup>34</sup> because it would not significantly affect the protection of investors or the public interest. The proposed rule change does not significantly affect the protection of investors or the public interest because it would offer Users optional functionality that will facilitate the execution of orders that would otherwise post, or remain posted, to the BZX Book, thereby increasing the efficient

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

<sup>33</sup> Id.

<sup>34</sup> Id.

functioning of the Exchange. As described above, the proposed functionality is identical to that offered by EDGX pursuant to rules that were published by the Commission.<sup>35</sup> The proposed functionality is also substantially similar to that offered by Nasdaq and Arca, both of which have been approved or published by the Commission and, therefore, presents no novel issues that have not already been addressed.<sup>36</sup> In addition, the proposed rule change does not impose any significant burden on competition for the reasons set forth under Section 4 above. The Exchange has accordingly designated this rule filing as “non-controversial” under Section 19(b)(3)(A) of the Act<sup>37</sup> and paragraph (f)(6) of Rule 19b-4 thereunder.<sup>38</sup>

The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Waiver of the 30-day operative delay would benefit investors by enabling the Exchange to implement the proposed rule change promptly after filing, thus allowing the Exchange to make this functionality available to Users. The proposed functionality is completely optional, may lead to increased interactions between orders on the Exchange, and, as noted above, is identical to functionality already provided on EDGX. Waiver of the operative delay is, therefore, consistent with the protection of investors and the public interest.

At any time within sixty (60) days of the filing of such proposed rule change, the Commission may summarily temporarily suspend such rule change if it appears to the

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<sup>35</sup> See supra note 3.

<sup>36</sup> See supra notes 4 and 5.

<sup>37</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>38</sup> 17 C.F.R. 240.19b-4(f)(6).

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is based on and identical to comparable rules of EDGX, specifically Rules 11.6(n)(7), 11.8(b)(7) and 11.8(d)(5). The only differences between such Rules and the proposed rule change are based on the format and structure of the Exchange's rules as compared to the format and structure of the EDGX rules. The proposed rule change to Exchange Rule 11.6(n) is also based on Nasdaq Rule 4703(m) and Arca Rule 7.31-E(d)(2)(B). Each operate in an identical manner but for Nasdaq requiring the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca's Non-Display Remove Modifier.

9. Security Based-Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-\_\_\_\_\_; File No. SR-CboeBZX-2018-042)

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.9, Orders and Modifiers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)(iii) thereunder,<sup>4</sup> which renders it effective upon filing with the Commission. 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

The Exchange filed a proposal to add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of Cboe EDGX Exchange, Inc. (“EDGX”)<sup>5</sup> and substantially similar to the rules

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

<sup>2</sup> 17 CFR 240.19b-4.

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> See EDGX Rules 11.6(n)(7), 11.8(b)(7) and 11.8(d)(5); see also Securities Exchange Act Release No. 80841 (June 1, 2017), 82 FR 26559 (June 7, 2017), (Notice of Filing and Immediate Effectiveness To Add a New Optional Order Instruction Known as Non-Displayed Swap).

of the Nasdaq Stock Market LLC (“Nasdaq”)<sup>6</sup> and NYSE Arca, Inc. (“Arca”).<sup>7</sup>

The text of the proposed rule change is available at the Exchange’s website at [www.markets.cboe.com](http://www.markets.cboe.com), at the Exchange’s principal office and at the Public Reference Room of the Commission.

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 parts 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 add a new optional order type modifier to be known as Non-Displayed Swap. The proposed amendments are substantively identical to the rules of EDGX<sup>8</sup> and substantially similar to the rules of Nasdaq and Arca.<sup>9</sup>

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<sup>6</sup> See Nasdaq Rule 4703(m) (defining the Trade Now order modifier); see also Securities Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (Notice of Filing and Immediate Effectiveness of Proposed Rule change to Amend Rule 4702 and Rule 4703 to Add a “Trade Now” Instruction to Certain Order Types).

<sup>7</sup> See Arca Rule 7.31-E(d)(2)(B) (describing the Non-Display Remove Modifier); see also Securities Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (Order Approving Proposed Rule change Adopting New Equity Trading Rules Relating to Orders and Modifiers and Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange’s New Trading Technology Platform).

<sup>8</sup> See supra note 5.

The proposed Non-Displayed Swap (“NDS”) instruction would provide resting limit orders that are not displayed on the Exchange<sup>10</sup> and Mid-Point Peg Orders resting on the BZX Book<sup>11</sup> with a greater ability to receive an execution when that resting order is locked by an incoming order (e.g., the price of the resting non-displayed order is equal to the price of the incoming order that is to be placed on the BZX Book). The NDS instruction would be an optional order instruction that would allow Users<sup>12</sup> to have their resting non-displayed orders execute against an incoming order with a Post Only instruction rather than have it be locked by the incoming order. NDS would be defined as an instruction on an order resting on the BZX Book that, when locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to paragraph (c)(6) of Exchange Rule 11.9,<sup>13</sup> causes such order to be converted to an executable order that removes liquidity against such incoming order. An NDS instruction would only be eligible for inclusion on a non-displayed limit order or a Mid-Point Peg Order. An order with a NDS instruction would not be eligible for routing pursuant to Exchange Rule

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<sup>9</sup> See supra notes 6 and 7.

<sup>10</sup> See Exchange Rule 11.9(c)(11).

<sup>11</sup> See Exchange Rule 1.5(e).

<sup>12</sup> See Exchange Rule 1.5(cc).

<sup>13</sup> Under Exchange Rule 11.9(c)(6), a BZX Post Only Order will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below \$1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

11.13, Order Execution and Routing. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book (though such lock would not be displayed by the Exchange)<sup>14</sup> by facilitating the execution of orders that would otherwise lock each other.

The following example illustrates the operation of an order with a NDS instruction. Assume the National Best Bid and Offer is \$10.00 by \$10.04. There is a non-displayed limit order to buy resting on the BZX Book at \$10.03. A BZX Post Only Order to sell priced at \$10.03 is entered. Under current behavior, the incoming sell order marked as Post Only would post to the BZX Book because it would not receive sufficient price improvement.<sup>15</sup> This would result in the BZX Book being internally locked.<sup>16</sup> As proposed, if the non-displayed limit order to buy also included a NDS instruction, the orders would instead execute against each other at \$10.03, with the resting buy order with the NDS instruction becoming the remover of liquidity and the incoming BZX Post Only Order to sell becoming the liquidity provider.

Assume the same facts as above, but that a non-displayed limit order to buy at \$10.03 (“Order A”) is also resting on the BZX Book with time priority ahead of the non-displayed limit order mentioned above (“Order B”). Like above, a BZX Post Only Order to sell priced at \$10.03 is entered. Under current behavior, the incoming BZX Post Only

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<sup>14</sup> See Exchange Rule 11.13(a)(4)(C).

<sup>15</sup> Id.

<sup>16</sup> In the event the incoming order with a Post Only instruction was to be displayed, it would post and display at \$10.03 and the resting buy order with a Non-Displayed instruction would not execute against it or subsequent incoming sell orders at \$10.03 for so long as the sell order was displayed on the Exchange. See Exchange Rule 11.13(a)(4)(C) and (D).

Order to sell would post to the BZX Book because the value of such execution against the resting buy interest when removing liquidity does not equal or exceed the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. As proposed, if Order B also included a NDS instruction, the incoming sell order would execute against Order B and such order would become the remover of liquidity and the BZX Post Only Order to sell would become the liquidity provider. In such case, Order A cedes time priority to Order B because Order A did not also include a NDS instruction and thus the User that submitted Order A did not indicate the preference to be treated as the remover of liquidity in favor of an execution; instead, by not using NDS, a User indicates the preference to remain posted on the BZX Book as a liquidity provider.<sup>17</sup> However, if the incoming sell order was priced at \$10.02, it would receive sufficient price improvement to execute upon entry against all resting buy limit orders in time priority at \$10.03.<sup>18</sup>

If the order with a NDS instruction is only partially executed, the unexecuted portion of that order remains on the BZX Book and maintains its priority, as is the case today for an order that is partially executed and not cancelled by the User.<sup>19</sup> The

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<sup>17</sup> Should the limit order to buy at \$10.03 with time priority (i.e., Order A) be displayed on the BZX Book, the incoming BZX Post Only Order to sell at \$10.03 will not execute against the non-displayed buy order with a NDS instruction because displayed orders have priority over non-displayed orders. In such a case, the incoming limit order would be handled as it is today in accordance with existing Exchange rules. See, e.g., Exchange Rules 11.9 and 11.13(a).

<sup>18</sup> The execution occurs here because the value of the execution against the buy order when removing liquidity exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. See supra note 13.

<sup>19</sup> See Exchange Rule 11.12(a)(5).

Exchange is proposing to make the NDS instruction available to limit orders<sup>20</sup> that are not displayed on the Exchange<sup>21</sup> and MidPoint Peg Orders.<sup>22</sup> Because the NDS instruction would be only available to limit orders not displayed on the Exchange and to MidPoint Peg Orders, the NDS instruction would not be available to other order types provided by the Exchange under its Rule 11.9, such as BZX Market Orders, Reserve Orders, and Market Maker Peg Orders,<sup>23</sup> as the NDS instruction would be inconsistent with the use of those order types. The NDS instruction could, however, be combined with other instructions also available to non-displayed limit orders, such as the Minimum Quantity Order instruction, the Primary Pegged Order instruction, the Market Pegged Order instruction or the Discretionary Order instruction.<sup>24</sup>

The Exchange notes that similar functionality exists on Nasdaq and Arca. Nasdaq refers to their functionality as the “Trade Now” instruction<sup>25</sup> and Arca refers to their functionality as the “Non-Display Remove Modifier”.<sup>26</sup> On Arca, a Limit Non-

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<sup>20</sup> See Exchange Rule 11.9(a)(1).

<sup>21</sup> See Exchange Rule 11.9(c)(11).

<sup>22</sup> See Exchange Rule 11.9(c)(9).

<sup>23</sup> See Exchange Rules 11.9(a)(2), 11.9(c)(1) and 11.9(c)(16), respectively.

<sup>24</sup> See Exchange Rules 11.9(c)(5), 11.9(c)(8)(A), 11.9(c)(8)(B) and 11.9(c)(10), respectively.

<sup>25</sup> See Nasdaq Rule 4703(m). See also Securities and Exchange Act Release No. 79282 (November 10, 2016), 81 FR 81219 (November 17, 2016) (SR-Nasdaq-2016-156) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 4703 and Rule 4703 to add a “Trade Now” Instruction to Certain Order Types).

<sup>26</sup> See Arca Rule 7.31-E(d)(2)(B). See also Securities and Exchange Act Release No. 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Order Approving Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Thereto,

Displayed Order may be designated with a Non-Display Remove Modifier. If so designated, a Limit Non-Displayed Order to buy (sell) will trade as the remover of liquidity with an incoming Adding Liquidity Only Order (“ALO Order”) to sell (buy) that has a working price equal to the working price of the Limit Non-Displayed Order.<sup>27</sup> On Nasdaq, Trade Now is an order attribute that allows a resting order that becomes locked by an incoming Displayed Order to execute against the available size of the contra-side locking order as a liquidity taker, and any remaining shares of the resting order will remain posted on the Nasdaq Book with the same priority.<sup>28</sup> Nasdaq requires the contra-side order to be display eligible, while the Exchange proposes to enable an order with a NDS instruction to remove liquidity regardless of whether the incoming order would have ultimately been eligible for display consistent with Arca’s Non-Display Remove Modifier.

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

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Adopting New Equity Trading Rules Relating to Orders and Modifiers and the Retail Liquidity Program To Reflect the Implementation of Pillar, the Exchange’s New Trading Technology Platform) (including the Non-Display Remove Modifier).

<sup>27</sup> See Arca Rule 7.31-E(d)(2)(b).

<sup>28</sup> Arca provides their Non-Display Remove Modifier to their Mid-Point Liquidity Orders (“MPL Orders”) designated Day and MPL-ALO Orders and Arca Only Orders. Nasdaq’s Trade Now functionality is available to Price to Comply Orders, Price to Display Orders, Non-Displayed Orders, Post-Only Orders, Midpoint Peg Post-Only Orders, and Market Maker Peg Orders. To the extent the NDS instruction is only available to non-displayed limit orders and MidPoint Peg Orders, the Exchange notes that the NDS instruction will apply to different order types than Arca’s Non-Display Remove Modifier and Nasdaq’s Trade Now functionality.

Act<sup>29</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>30</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 by offering Users optional functionality that will facilitate the execution of orders that would otherwise remain unexecuted, thereby increasing the efficient functioning of the Exchange. The NDS instruction is an optional feature that is intended to reflect the order management practices of various market participants. The proposed NDS instruction assists in the avoidance of an internally locked BZX Book by facilitating the execution of orders that would otherwise post, or remain posted, to the BZX Book.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. On the contrary, the Exchange believes the proposed rule change promotes competition because it will enable the Exchange to offer functionality substantially similar to that offered by Nasdaq and Arca (in addition to the fact that such functionality is identical to that already offered by the Exchange's affiliate, EDGX).<sup>31</sup> Therefore, the Exchange does not believe the proposed rule change will result in any burden on intermarket competition that is not necessary or appropriate in furtherance of

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<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> See supra notes 5-7.

the purposes of the Act. As the NDS feature will be equally available to all Users, the Exchange does not believe the proposed rule change will result in any burden on intramarket 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

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

Because the foregoing proposed rule change does not: (A) significantly affect the protection of investors or the public interest; (B) impose any significant burden on competition; and (C) by its terms, become operative for 30 days from the date on which it was filed or such shorter time as the Commission may designate it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>32</sup> and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>33</sup> the Exchange has designated this rule filing as non-controversial. The Exchange has given the Commission written notice of its 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.

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: (1) necessary or appropriate in the public interest; (2) for

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<sup>32</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>33</sup> 17 CFR 240.19b-4.

the protection of investors; or (3) 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 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 proposal is consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CboeBZX-2018-042 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-2018-042. 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 am and 3:00 pm. Copies of such filing will also 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-2018-042 and should be submitted on or before [\_\_\_\_\_21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>34</sup>

Robert W. Errett  
Deputy Secretary

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<sup>34</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are marked by [brackets].

Rules of Cboe BZX Exchange, Inc.

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## CHAPTER XI. TRADING RULES

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## Rule 11.9. Orders and Modifiers

(No change).

(a) – (b) (No change).

(c) *Other Types of Orders.*

(1) – (11) (No change).

(12) [(Reserved.)]Non-Displayed Swap (“NDS”) Order. An instruction on an order resting on the BZX Book that, when locked by an incoming BZX Post Only Order that does not remove liquidity pursuant to paragraph (c)(6) of this Rule, causes such order to be converted to an executable order that removes liquidity against such incoming order. An NDS instruction may only be included on a limit order that is not displayed on the Exchange or a Mid-Point Peg Order. An order with an NDS instruction is not eligible for routing pursuant to Rule 11.13.

(13) – (19) (No change).

(d) – (g) (No change).

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