

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2019 - * 059

Amendment No. (req. for Amendments *)

Filing by Cboe BZX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

☐

Section 806(e)(2) *

☐

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

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

The Exchange proposes to adopt a new Step-Up Tier.

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 *	Corinne	Last Name *	Klott
Title *	Assistant General Counsel		
E-mail *	cklott@cboe.com		
Telephone *	(312) 786-7793	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 06/19/2019

By Corinne Klott

(Name *)

Assistant General Counsel

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.

cklott@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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 *

Add Remove View

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

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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

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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

Add Remove View

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

Add Remove View

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 Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members³ of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

The text of the proposed rule change is attached as Exhibit 5. Material proposed to be added is underlined. Material proposed to be deleted is enclosed in brackets.

(b) Not applicable.

(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 17, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Corinne Klott, Assistant General Counsel, (312) 786-7793.

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

(a) Purpose

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

The Exchange proposes to amend its fee schedule applicable to its equities trading platform (“BZX Equities”) to adopt a new Step-Up Tier, effective July 1, 2019.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a “Maker-Taker” model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange’s Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, the Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity⁴ and assesses a fee of \$0.0025 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, pursuant to footnote 2 of the Fees Schedule, the Exchange offers four Step-Up Tiers that provide Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over

⁴ Displayed Orders which add liquidity in Tape B securities receive a standard rebate of \$0.0025 per share.

a predetermined baseline. Under the current Step-Up Tiers, a Member receives a rebate of \$0.0030 (Tier 1), \$0.0031 (Tier 2 and Tier 3), or \$0.0032 (Tier 4) per share for qualifying orders which yield fee codes B,⁵ V,⁶ or Y⁷ if the corresponding required criteria per tier is met.⁸ More specifically, Step-Up Tiers 1 – 4 require that Members reach certain Step-Up Add TCV thresholds. As currently defined in the BZX Equities fee schedule, Step-Up Add TCV means ADAV⁹ as a percentage of TCV¹⁰ in the relevant baseline month subtracted from current ADAV as a percentage of TCV.¹¹ The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

⁵ Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

⁶ Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

⁷ Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

⁸ See Cboe BZX U.S. Equities Fees Schedule, Footnote 2, Step-Up Tiers.

⁹ “ADAV” means average daily volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ “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.

¹¹ The following demonstrates how Step-Up Add TCV is calculated: In April 2018, Member A had an ADAV of 12,947,242 shares and average daily TCV was 9,248,029,751, resulting in an ADAV as a percentage of TCV of 0.14%; In February 2019, Member A had an ADAV of 46,826,572 and average daily TCV was 7,093,306,325, resulting in an ADAV as a percentage of TCV of 0.66%. Member A’s Step-Up Add TCV from December 2018 was therefore 0.52% which makes Member A eligible for the existing Step-Up Tier 4 rebate. (i.e., 0.66% (Feb 2019) – 0.14% (Dec 2018), which is greater than 0.50% as required by current Tier 4).

The Exchange now proposes to amend footnote 2 to adopt a fifth Step-Up Tier, which would become “Step-Up Tier 1”. Under the proposed Step-Up Tier 1, a Member would receive a rebate of \$0.0030 per share for their qualifying orders which yield fee codes B, V, or Y where the Member has a Step-Up Add TCV from April 2019 greater or equal to 0.05%. Members that achieve the proposed Step-Up Tier 1 must therefore increase the amount of liquidity that they provide on BZX by 0.05% relative to their ADAV as a percentage of TCV in April 2019, thereby contributing to a deeper and more liquid market, which benefits all market participants. The proposed tier provides Members an additional opportunity to receive a rebate and is designed to provide Members that provide displayed liquidity on the Exchange a further incentive to increase that order flow, which would benefit all Members by providing greater execution opportunities on the Exchange. The Exchange notes the proposed tier is available to all Members.

Lastly, in connection with the proposed change described above, the Exchange also proposes to renumber the existing Step-Up Tiers accordingly.

(b) Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹² in general, and furthers the objectives of Section 6(b)(4),¹³ in particular, 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 and does not unfairly discriminate between customers, issuers, brokers or

¹² 15 U.S.C. 78f.

¹³ 15 U.S.C. 78f(b)(4).

dealers. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive an enhanced rebate. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁴, including the Exchange¹⁵, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of growth patterns.

Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the

¹⁴ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers.

¹⁵ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1-4.

Exchange provides, including the pricing of comparable tiers.¹⁶

Moreover, the Exchange believes the proposed Step-Up Tier 1 is a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline. Particularly, the Exchange believes that adopting a tier with less stringent criteria compared to existing Step-Up Tiers 2 – 4 (now Step-Up Tiers 3-5), and an alternative criteria to Step-Up Tier 1 (now Step-Up Tier 2), will encourage those Members who could not achieve the existing tiers previously to increase their order flow as compared to April 2019 as a means to receive the new tier's enhanced rebate. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed rebate is reasonable based on the difficulty of satisfying the tier's criteria, using April 2019 as the predetermined baseline and ensures the proposed rebate and threshold appropriately reflects the incremental difficulty to achieve the existing Step-Up Tiers. The proposed rebate amount also does not represent a significant departure from the rebates currently offered under the Exchange's existing Step-Up Tiers. Indeed, the rebate amount is the same offered as existing Step-Up Tier 1 (now Step-Up Tier 2) (i.e., \$0.0030 per share) and slightly less than the rebates offered under Step-Up Tiers 2-4 (now Step-Up Tiers 3-5) (i.e., \$0.0031-\$0.0032 per share).

¹⁶ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed tier and have a reasonable opportunity to meet the tier's criteria, which as noted above is less stringent than other existing step-up tiers. Without having a view of Member's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any Members qualifying for this tier. However, the Exchange believes the proposed tier would provide an incentive for Members to submit additional adding liquidity to qualify for the proposed rebate. The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would apply to all Members that meet the required criteria under proposed Step-Up Tier 1.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation

NMS of fostering competition among orders, which promotes “more efficient pricing of individual stocks for all types of orders, large and small.”¹⁷

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier’s criteria and will all receive the proposed rebate if such criteria is met.

Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier would incentivize market participants to direct providing displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and off-exchange venues, including 32 alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 18% of the market

¹⁷ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

share.¹⁸ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

¹⁸ See Cboe Global Markets U.S. Equities Market Volume Summary (June 14, 2019), available at http://markets.cboe.com/us/equities/market_share/.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

dealers'".²⁰ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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)

(a) This proposed rule change is filed pursuant to paragraph (A) of Section 19(b)(3) of the Act.

(b) This proposed rule change establishes dues, fees or other charges among its members and, as such, may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(ii) of the Act²¹ and paragraph (f)(2) of Rule 19b-4 thereunder.²²

(c) Inapplicable.

(d) Inapplicable.

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

²⁰ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²¹ 15 U.S.C. 78s(b)(3)(A)(ii).

²² 17 CFR 240.19b-4(f)(2).

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

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 Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2019-059]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend the Fee Schedule Applicable to Members and non-Members¹ of the Exchange Pursuant to BZX Rules 15.1(a) and (c)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on [insert date], Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members⁴ of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing. The text of the proposed rule change is attached as Exhibit 5.

¹ A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

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

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its fee schedule applicable to its equities trading platform ("BZX Equities") to adopt a new Step-Up Tier, effective July 1, 2019.

The Exchange first notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. The Exchange in particular operates a "Maker-Taker" model whereby it pays credits to members that provide liquidity and assesses fees to those that remove liquidity. The Exchange's Fees Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, the

Exchange provides a standard rebate of \$0.0020 per share for orders that add liquidity⁵ and assesses a fee of \$0.0025 per share for orders that remove liquidity. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, pursuant to footnote 2 of the Fees Schedule, the Exchange offers four Step-Up Tiers that provide Members an opportunity to qualify for an enhanced rebate on their orders that add liquidity where they increase their relative liquidity each month over a predetermined baseline. Under the current Step-Up Tiers, a Member receives a rebate of \$0.0030 (Tier 1), \$0.0031 (Tier 2 and Tier 3), or \$0.0032 (Tier 4) per share for qualifying orders which yield fee codes B,⁶ V,⁷ or Y⁸ if the corresponding required criteria per tier is met.⁹ More specifically, Step-Up Tiers 1 – 4 require that Members reach certain Step-Up Add TCV thresholds. As currently defined in the BZX Equities fee schedule, Step-Up Add TCV means ADAV¹⁰ as a percentage of TCV¹¹ in the relevant

⁵ Displayed Orders which add liquidity in Tape B securities receive a standard rebate of \$0.0025 per share.

⁶ Fee code B is appended to displayed orders which add liquidity to Tape B and is provided a rebate of \$0.0025 per share.

⁷ Fee code V is appended to displayed orders which add liquidity to Tape A and is provided a rebate of \$0.0020 per share.

⁸ Fee code Y is appended to displayed orders which add liquidity to Tape C and is provided a rebate of \$0.0020 per share.

⁹ See Cboe BZX U.S. Equities Fees Schedule, Footnote 2, Step-Up Tiers.

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

baseline month subtracted from current ADAV as a percentage of TCV.¹² The Exchange notes that step-up tiers are designed to encourage Members that provide displayed liquidity on the Exchange to increase their order flow, which would benefit all Members by providing greater execution opportunities on the Exchange.

The Exchange now proposes to amend footnote 2 to adopt a fifth Step-Up Tier, which would become “Step-Up Tier 1”. Under the proposed Step-Up Tier 1, a Member would receive a rebate of \$0.0030 per share for their qualifying orders which yield fee codes B, V, or Y where the Member has a Step-Up Add TCV from April 2019 greater or equal to 0.05%. Members that achieve the proposed Step-Up Tier 1 must therefore increase the amount of liquidity that they provide on BZX by 0.05% relative to their ADAV as a percentage of TCV in April 2019, thereby contributing to a deeper and more liquid market, which benefits all market participants. The proposed tier provides Members an additional opportunity to receive a rebate and is designed to provide Members that provide displayed liquidity on the Exchange a further incentive to increase that order flow, which would benefit all Members by providing greater execution opportunities on the Exchange. The Exchange notes the proposed tier is available to all Members.

¹¹ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

¹² The following demonstrates how Step-Up Add TCV is calculated: In April 2018, Member A had an ADAV of 12,947,242 shares and average daily TCV was 9,248,029,751, resulting in an ADAV as a percentage of TCV of 0.14%; In February 2019, Member A had an ADAV of 46,826,572 and average daily TCV was 7,093,306,325, resulting in an ADAV as a percentage of TCV of 0.66%. Member A’s Step-Up Add TCV from December 2018 was therefore 0.52% which makes Member A eligible for the existing Step-Up Tier 4 rebate. (i.e., 0.66% (Feb 2019) – 0.14% (Dec 2018), which is greater than 0.50% as required by current Tier 4).

Lastly, in connection with the proposed change described above, the Exchange also proposes to renumber the existing Step-Up Tiers accordingly.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,¹³ in general, and furthers the objectives of Section 6(b)(4),¹⁴ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

In particular, the Exchange believes the proposed tier is reasonable because it provides an additional opportunity for Members to receive an enhanced rebate. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges¹⁵, including the Exchange¹⁶, and are reasonable, equitable and non-discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an

¹³ 15 U.S.C. 78f.

¹⁴ 15 U.S.C. 78f(b)(4).

¹⁵ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers.

¹⁶ See e.g., Cboe BZX U.S. Equities Exchange Fee Schedule, Footnote 2, Step-Up Tiers 1-4.

exchange's market quality and (ii) associated higher levels of growth patterns.

Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.¹⁷

Moreover, the Exchange believes the proposed Step-Up Tier 1 is a reasonable means to encourage Members to increase their liquidity on the Exchange based on increasing their relative volume above a predetermined baseline. Particularly, the Exchange believes that adopting a tier with less stringent criteria compared to existing Step-Up Tiers 2 – 4 (now Step-Up Tiers 3-5), and an alternative criteria to Step-Up Tier 1 (now Step-Up Tier 2), will encourage those Members who could not achieve the existing tiers previously to increase their order flow as compared to April 2019 as a means to receive the new tier's enhanced rebate. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed rebate is reasonable based on the difficulty of satisfying the tier's criteria, using

¹⁷ See e.g., NYSE Arca Equities, Fees and Charges, Step Up Tiers which offers rebates between \$0.0022 - \$0.0034 per share if the corresponding required criteria per tier is met. NYSE Arca Equities' Step Up Tiers similarly require Members to increase their relative liquidity each month over a predetermined baseline.

April 2019 as the predetermined baseline and ensures the proposed rebate and threshold appropriately reflects the incremental difficulty to achieve the existing Step-Up Tiers.

The proposed rebate amount also does not represent a significant departure from the rebates currently offered under the Exchange's existing Step-Up Tiers. Indeed, the rebate amount is the same offered as existing Step-Up Tier 1 (now Step-Up Tier 2) (i.e., \$0.0030 per share) and slightly less than the rebates offered under Step-Up Tiers 2-4 (now Step-Up Tiers 3-5) (i.e., \$0.0031-\$0.0032 per share).

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all Members are eligible for the proposed tier and have a reasonable opportunity to meet the tier's criteria, which as noted above is less stringent than other existing step-up tiers. Without having a view of Member's activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any Members qualifying for this tier. However, the Exchange believes the proposed tier would provide an incentive for Members to submit additional adding liquidity to qualify for the proposed rebate. The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other rebate tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive an enhanced rebate. Furthermore, the proposed rebate would apply to all Members that meet the required criteria under proposed Step-Up Tier 1.

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

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes

that the proposed change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁸

The Exchange believes the proposed rule change does impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies to all Members equally in that all Members are eligible for the proposed tier, have a reasonable opportunity to meet the tier's criteria and will all receive the proposed rebate if such criteria is met.

Additionally the proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier would incentivize market participants to direct providing displayed order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 12 other equities exchanges and

¹⁸ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

off-exchange venues, including 32 alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 18% of the market share.¹⁹ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²⁰ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker

¹⁹ See Cboe Global Markets U.S. Equities Market Volume Summary (June 14, 2019), available at http://markets.cboe.com/us/equities/market_share/.

²⁰ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

dealers'....".²¹ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the 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

²¹ NetCoalition v. SEC, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).

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-2019-059 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-2019-059. 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; the Commission does not edit personal identifying information from submissions. You

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-059 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

Secretary

²⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe BZX U.S. Equities Exchange Fee Schedule**Effective [May 2]July 1, 2019**

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Footnotes:

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2. Step-Up Tiers

Applicable to the following fee codes: B, V and Y.

Tier	Rebate Per Share to Add	Required Criteria
<u>Tier 1</u>	<u>(\$0.0030)</u>	<u>Member has a Step-Up Add TCV from April 2019 \geq 0.05%</u>
Tier [1] <u>2</u>	(\$0.0030)	(1) Member has a Step-Up Add TCV from April 2016 \geq 0.15%; and (2) Member has an ADAV as a percentage of TCV \geq 0.20%
Tier [2] <u>3</u>	(\$0.0031)	(1) MPID has a Step-Up Add TCV from January 2018 \geq 0.30%; and (2) MPID has an ADAV as a percentage of TCV \geq 0.45%
Tier [3] <u>4</u>	(\$0.0031)	Member has a Step-Up Add TCV from December 2018 \geq 0.20%
Tier [4] <u>5</u>	(\$0.0032)	Member has a Step-Up Add TCV from December 2018 \geq 0.50%

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