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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 22

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

File No.* SR - 2020 - * 027

Amendment No. (req. for Amendments *)

Filing by Cboe BZX Exchange, Inc.

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

Initial *

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Amendment *

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Withdrawal

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Section 19(b)(2) *

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Section 19(b)(3)(A) *

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Section 19(b)(3)(B) *

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Rule

Pilot

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Extension of Time Period
for Commission Action *

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Date Expires *

☐ 19b-4(f)(1)

☐ 19b-4(f)(4)

☒ 19b-4(f)(2)

☐ 19b-4(f)(5)

☐ 19b-4(f)(3)

☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *

☐

Section 806(e)(2) *

☐

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

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

The Exchange proposes to amend the fee schedule to institute a fee code applicable to the Cboe Market Close.

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 * Sarah

Last Name * Tadtman

Title * Counsel

E-mail * stadtman@cboe.com

Telephone * (913) 815-7203

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 03/19/2020

By Kyle Murray

(Name *)

Vice President, Associate 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.

kmurray@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

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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.

Item 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”)¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule to institute a fee code applicable to the Cboe Market Close.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on March 5, 2020.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7467, or Sarah Tadtman, Counsel, (913) 815-7203.

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

(a) Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform (“BZX Equities”) to introduce a fee code for orders that participate in the Cboe Market Close.³ As proposed, orders executed in the Cboe Market Close would yield fee code “MC.” There would be no transaction fees associated with such orders.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed fee changes on March 5, 2020 (SR-CboeBZX-2020-022). On March 13, 2020, the Exchange withdrew that filing and

The Exchange plans to implement the Cboe Market Close on March 6, 2020 as part of its ongoing efforts to improve market structure for the benefit of investors.⁴ The Cboe Market Close is an innovative closing match process for non-BZX Listed Securities that is designed to match buy and sell Market-On-Close (“MOC”) orders at the official closing price for such security published by the primary listing market. The Exchange is introducing the Cboe Market Close in response to requests from market participants, particularly buy-side firms, for an alternative to the primary listing exchanges’ closing auctions that still provides an execution at a security’s official closing price. Cboe Market Close is designed in response to industry persistence and interest in an alternative to the listing market’s closing auction.

As noted in the Approval Order, BZX stated that the fees for Cboe Market Close would be set and maintained over time at a rate less than the fee charged by the applicable listing exchange for its own respective closing mechanism. Accordingly, in conjunction with the upcoming implementation of the Cboe Market Close, the Exchange proposes to introduce a new fee code for orders that are executed in the Cboe Market Close, which would yield fee code “MC.” As proposed, there would be no fee to participate in the Cboe Market Close, thereby providing cost effective executions at the official closing price on a public exchange, and facilitating the execution of those orders

re-filed (SR-CboeBZX-2020-024). On March 19, 2020, the Exchange withdrew that filing and submitted this filing.

⁴ The Commission approved the Cboe Market Close on January 21, 2020. See Securities Exchange Act Release No. 88008 (January 21, 2020) 85 FR 4726 (January 27, 2020) (the “Approval Order”) (SR-BatsBZX-2017-34).

at a lower rate than such orders would be charged in a primary listing markets' closing auction.⁵

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also 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. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their MOC orders to the Cboe Market Close, which the Exchange believes would facilitate the execution of those orders at the official closing price.

In particular, the Exchange believes the proposal is reasonable because it provides Members a free alternative for executing MOC orders at the official closing price.

Currently, market participants may execute MOC orders on public exchanges at the

⁵ For example, Nasdaq offers tiered fees for both MOC and Limit-on-Close ("LOC") order executions in its closing auction process ranging from \$0.0008 to \$0.0016 per executed share. See Nasdaq Crossing Network, Execution Fees for the Nasdaq Closing Cross, Tiers A through G of the Nasdaq Price List. NYSE offers tiered fees for MOC order executions in its closing auction process ranging from \$0.0004 to \$0.0010. See Executions at the Close Equity Per Share Charge – per transaction (both sides) – of the NYSE Price List.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

official closing price only by participating in the primary listing market's closing auction. As noted in the Approval Order, BZX stated that the fees for Cboe Market Close would be set and maintained over time at a rate less than the fee charged by the applicable listing exchange for its own respective closing mechanism. Accordingly, the proposal would allow all Members to participate in the Cboe Market Close without charge, and therefore at a price that is less than the applicable closing auction fees that would be incurred on the primary listing exchanges.⁸ The Exchange also believes the proposal is reasonable because fostering price competition for the execution of MOC orders may facilitate the ability for smaller and mid-size brokers to better compete for investors' MOC order flow. In turn, greater choice among, and participation by, broker-dealers in handling MOC orders should inure to the benefit of end investors. Further, the Exchange believes the proposal may increase execution quality competition for MOC orders by incentivizing other venues, including the primary listing exchanges, to continue to innovate and compete to attract MOC orders to their venues.

Additionally, the Exchange believes the proposal is equitable and not unfairly discriminatory because it would apply equally to all Members who choose to participate in the Cboe Market Close. The proposed fee change is designed to allow broad participation in the Cboe Market Close, and there would be no differentiation in fees charged to Members. Rather, the Exchange's proposal would allow all Members to participate in the Cboe Market Close without charge. In turn, this would allow any

⁸ For example, Nasdaq offers tiered fees for executions in its closing auction process ranging from \$0.0008 to \$0.0016 per executed share. See Tiers A through G of the Nasdaq fee schedule <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

interested Member to participate in the Cboe Market Close on an equal and non-discriminatory basis.

Lastly, while the Exchange's proposal offers participation in the Cboe Market Close at no cost to Members, the Exchange will continue to surveil for potentially manipulative activities and will enhance its surveillance procedures and work with other SROs to detect and prevent manipulative activity through the use of Cboe Market Close.

Item 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 MOC orders to a public exchange for execution at the official closing price.

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change allows all Members to participate in the Cboe Market Close without charge. The proposal is designed to encourage Members to participate in the Cboe Market Close, which the Exchange believes will benefit all Members by fostering price competition for the execution of MOC orders at the official closing price, and may facilitate the ability for smaller and mid-size brokers to better compete for investors' MOC order flow. In turn, greater choice among, and participation by, broker-dealers in handling MOC orders should inure to the benefit of end investors.

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. The purpose of Cboe Market Close is to increase competition for the execution of MOC orders. Specifically, the Exchange believes the proposal may increase competition for MOC orders by incentivizing other venues, including the primary listing exchanges, to continue to innovate and compete to attract MOC orders to their venues.⁹ Further, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their MOC order flow, including primary listing markets and off-exchange venues and alternative trading systems.¹⁰

Lastly, the proposal is offered in conjunction with the launch of the Cboe Market Close which is designed to enhance competition for the execution of MOC orders at the official closing price. Market participants may only execute at the official closing price on a public exchange is through the primary listing market auction. Generally, more than 70% of execution volume at the official closing price occurs on the primary listing exchange. Therefore, the proposal is designed to enhance competition among exchanges by offering market participants an alternative option to execute MOC orders at the official closing price. Furthermore, market participants can readily choose to send their MOC orders to primary listing markets and off-exchange venues if they deem fee levels at those other venues to be more favorable. For example, recent studies have shown that

⁹ Supra note 3.

¹⁰ Id.

Trade Reporting Facility (“TRF”) volumes using the primary closing auction price have reached as high as 30% on some occasions.¹¹

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.”¹² The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”¹³ Accordingly, the Exchange does not believe the proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

¹¹ See BZX Statement in Support of the Division’s Order Approving a Rule to Introduce Cboe Market Close, at 16 (April 12, 2018).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹³ *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)).

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

The Exchange neither solicited nor received comments on the proposed rule change.

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(2)¹⁵ thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this 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.

(c) Not applicable.

(d) Not applicable.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(2).

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

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

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the Federal Register.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2020-027]

[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 to Institute a Fee Code Applicable to the Cboe Market Close

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on [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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule to institute a fee code applicable to the Cboe Market Close. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend the fee schedule applicable to its equities trading platform ("BZX Equities") to introduce a fee code for orders that participate in the Cboe Market Close.³ As proposed, orders executed in the Cboe Market Close would yield fee code "MC." There would be no transaction fees associated with such orders.

The Exchange plans to implement the Cboe Market Close on March 6, 2020 as part of its ongoing efforts to improve market structure for the benefit of investors.⁴ The Cboe Market Close is an innovative closing match process for non-BZX Listed Securities that is designed to match buy and sell Market-On-Close ("MOC") orders at the official closing price for such security published by the primary listing market. The Exchange is introducing the Cboe Market Close in response to requests from market participants,

³ The Exchange initially filed the proposed fee changes on March 5, 2020 (SR-CboeBZX-2020-022). On March 13, 2020, the Exchange withdrew that filing and re-filed (SR-CboeBZX-2020-024). On March 19, 2020, the Exchange withdrew that filing and submitted this filing.

⁴ The Commission approved the Cboe Market Close on January 21, 2020. See Securities Exchange Act Release No. 88008 (January 21, 2020) 85 FR 4726 (January 27, 2020) (the "Approval Order") (SR-BatsBZX-2017-34).

particularly buy-side firms, for an alternative to the primary listing exchanges' closing auctions that still provides an execution at a security's official closing price. Cboe Market Close is designed in response to industry persistence and interest in an alternative to the listing market's closing auction.

As noted in the Approval Order, BZX stated that the fees for Cboe Market Close would be set and maintained over time at a rate less than the fee charged by the applicable listing exchange for its own respective closing mechanism. Accordingly, in conjunction with the upcoming implementation of the Cboe Market Close, the Exchange proposes to introduce a new fee code for orders that are executed in the Cboe Market Close, which would yield fee code "MC." As proposed, there would be no fee to participate in the Cboe Market Close, thereby providing cost effective executions at the official closing price on a public exchange, and facilitating the execution of those orders at a lower rate than such orders would be charged in a primary listing markets' closing auction.⁵

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁶ in general, and furthers the objectives of Section 6(b)(4),⁷ in particular, as it is designed to provide for the equitable allocation of

⁵ For example, Nasdaq offers tiered fees for both MOC and Limit-on-Close ("LOC") order executions in its closing auction process ranging from \$0.0008 to \$0.0016 per executed share. See Nasdaq Crossing Network, Execution Fees for the Nasdaq Closing Cross, Tiers A through G of the Nasdaq Price List. NYSE offers tiered fees for MOC order executions in its closing auction process ranging from \$0.0004 to \$0.0010. See Executions at the Close Equity Per Share Charge – per transaction (both sides) – of the NYSE Price List.

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also 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. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their MOC orders to the Cboe Market Close, which the Exchange believes would facilitate the execution of those orders at the official closing price.

In particular, the Exchange believes the proposal is reasonable because it provides Members a free alternative for executing MOC orders at the official closing price. Currently, market participants may execute MOC orders on public exchanges at the official closing price only by participating in the primary listing market's closing auction. As noted in the Approval Order, BZX stated that the fees for Cboe Market Close would be set and maintained over time at a rate less than the fee charged by the applicable listing exchange for its own respective closing mechanism. Accordingly, the proposal would allow all Members to participate in the Cboe Market Close without charge, and therefore at a price that is less than the applicable closing auction fees that would be incurred on the primary listing exchanges.⁸ The Exchange also believes the proposal is reasonable because fostering price competition for the execution of MOC orders may facilitate the ability for smaller and mid-size brokers to better compete for investors' MOC order flow. In turn, greater choice among, and participation by, broker-dealers in

⁸ For example, Nasdaq offers tiered fees for executions in its closing auction process ranging from \$0.0008 to \$0.0016 per executed share. See Tiers A through G of the Nasdaq fee schedule <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

handling MOC orders should inure to the benefit of end investors. Further, the Exchange believes the proposal may increase execution quality competition for MOC orders by incentivizing other venues, including the primary listing exchanges, to continue to innovate and compete to attract MOC orders to their venues.

Additionally, the Exchange believes the proposal is equitable and not unfairly discriminatory because it would apply equally to all Members who choose to participate in the Cboe Market Close. The proposed fee change is designed to allow broad participation in the Cboe Market Close, and there would be no differentiation in fees charged to Members. Rather, the Exchange's proposal would allow all Members to participate in the Cboe Market Close without charge. In turn, this would allow any interested Member to participate in the Cboe Market Close on an equal and non-discriminatory basis.

Lastly, while the Exchange's proposal offers participation in the Cboe Market Close at no cost to Members, the Exchange will continue to surveil for potentially manipulative activities and will enhance its surveillance procedures and work with other SROs to detect and prevent manipulative activity through the use of Cboe Market Close.

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 MOC orders to a public exchange for execution at the official closing price.

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

purposes of the Act. Particularly, the proposed change allows all Members to participate in the Cboe Market Close without charge. The proposal is designed to encourage Members to participate in the Cboe Market Close, which the Exchange believes will benefit all Members by fostering price competition for the execution of MOC orders at the official closing price, and may facilitate the ability for smaller and mid-size brokers to better compete for investors' MOC order flow. In turn, greater choice among, and participation by, broker-dealers in handling MOC orders should inure to the benefit of end investors.

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. The purpose of Cboe Market Close is to increase competition for the execution of MOC orders. Specifically, the Exchange believes the proposal may increase competition for MOC orders by incentivizing other venues, including the primary listing exchanges, to continue to innovate and compete to attract MOC orders to their venues.⁹ Further, as previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their MOC order flow, including primary listing markets and off-exchange venues and alternative trading systems.¹⁰

Lastly, the proposal is offered in conjunction with the launch of the Cboe Market Close which is designed to enhance competition for the execution of MOC orders at the official closing price. Market participants may only execute at the official closing price on a public exchange is through the primary listing market auction. Generally, more than

⁹ Supra note 3.

¹⁰ Id.

70% of execution volume at the official closing price occurs on the primary listing exchange. Therefore, the proposal is designed to enhance competition among exchanges by offering market participants an alternative option to execute MOC orders at the official closing price. Furthermore, market participants can readily choose to send their MOC orders to primary listing markets and off-exchange venues if they deem fee levels at those other venues to be more favorable. For example, recent studies have shown that Trade Reporting Facility (“TRF”) volumes using the primary closing auction price have reached as high as 30% on some occasions.¹¹

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.”¹² 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

¹¹ See BZX Statement in Support of the Division’s Order Approving a Rule to Introduce Cboe Market Close, at 16 (April 12, 2018).

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

otherwise, in the execution of order flow from broker dealers'....".¹³ Accordingly, the Exchange does not believe the proposal 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 neither solicited nor received comments on the proposed rule change.

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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹³ 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)).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

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-2020-027 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2020-027. 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-2020-027 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.¹⁶

Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BZX Exchange, Inc.

Fees Schedule

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Cboe BZX U.S. Equities Exchange Fee Schedule**Effective March 1[3]9, 2020**

* * * * *

Fee Codes and Associated Fees:

Fee Code	Description	Fee/(Rebate)
* * * * *		
<u>MC</u>	<u>Cboe Market Close</u>	<u>FREE</u>
<u>MX</u>	<u>Routed to NYSE American using TRIM or SLIM routing strategy</u>	<u>\$0.00020</u>
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