

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

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|---|--------------------------|-------------------------------------|--------------------------------------|---|--------------------------|
| 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"/> | | | 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) | |

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| 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"/> |

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| 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 amend the definition of the Final Last Sale Eligible Trade (FLSET) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security.

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 * Last Name *
Title *
E-mail *
Telephone * 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
By
(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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

Add Remove View

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”)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 definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The 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.³

The text of the proposed rule change is attached as Exhibit 5. The text of the proposed rule change is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(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 October 30, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Adrian Griffiths, Assistant General Counsel, (646) 856-8723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

(a) Purpose

The purpose of the proposed rule change is to amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The FLSET is used by the Exchange for a number of important purposes related to auctions in BZX-listed securities. For example, the FLSET sets the Halt Auction Reference Price for Halt Auctions following Non-LULD Regulatory Halts,⁴ and, in some cases, becomes the BZX Official Closing Price for a security where there is no Closing Auction, or where there is a Closing Auction but only an odd lot quantity is executed.⁵ Today, pursuant to BZX Rule 11.23(a)(9), the last trade occurring during Regular Trading Hours on the Exchange sets the FLSET if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. The last trade executed on BZX during Regular Trading Hours could be for a round lot or odd lot quantity. The Exchange believes, however, that it is undesirable for an odd lot execution that may be for an economically insignificant notional value to set the FLSET. The Exchange therefore proposes to amend BZX Rule 11.23(a)(9) such that the FLSET would be set by the last

⁴ See BZX Rule 11.23(d)(2)(C)(i)(B).

⁵ See BZX Rule 11.23(c)(2)(B), (B)(ii)(a). For BZX-listed corporate securities, the FLSET would be the BZX Official Closing price if there is no Closing Auction. If there is no round lot Closing Auction in a BZX-listed ETP, the FLSET would be the BZX Official Closing Price if a trade that would qualify as the FLSET occurred within the last five minutes before the end of Regular Trading Hours, or if there is no such qualifying trade but a time-weighted average price of the NBBO midpoint cannot be determined pursuant to BZX Rule 11.23(c)(2)(B)(ii)(b).

round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted.

In addition, BZX Rule 11.23(a)(9) further provides that where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. The Exchange proposes two changes to this language. First, the Exchange proposes to replace language that references “BZX Exchange” with simply “the Exchange” consistent with the defined term codified in BZX Rule 1.5(k) and used throughout the rulebook. Second, the Exchange proposes to amend the rule such that the last *round lot* trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. Although the Exchange has generally interpreted this requirement to convey that the last round lot trade reported to the consolidated tape, *i.e.*, consolidated last sale eligible trade, would set the FLSET, it is currently possible for an odd lot trade that was executed in the Exchange’s Opening Auction to set the FLSET in limited circumstances where the opening print was the last reported trade. Thus, adding this language to the rule would both increase clarity now that odd lot trades are reported to the consolidated tape,⁶ and ensure that odd lot Opening Auctions would no longer be

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

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

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁷ in general, and Section 6(b)(5) of the Act,⁸ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The FLSET is the last sale formulation designed for use in BZX auctions pursuant to BZX Rule 11.23, and is used for a number of purposes including to set various reference prices, and in some cases to set the BZX Official Closing Price in the absence of a Closing Auction where sufficient size is executed to set the closing price. Given the importance of the FLSET to the Exchange's auction processes, the Exchange believes that it is consistent with the public interest and the protection of investors to eliminate odd lot executions from the FLSET determination. Today, as discussed in the purpose section of this proposed rule change, only round lot executions from other exchanges are eligible to establish the FLSET used by BZX but an odd lot trade on BZX would

⁷ 15 U.S.C. § 78f(b).

⁸ 15 U.S.C. § 78f(b)(5).

nevertheless be FLSET eligible if executed in the last one second, or in limited circumstances where an odd lot Opening Auction sets the last reported trade. Further, this may be true whether or not there is a round lot execution on the Exchange or another exchange that would otherwise have set the FLSET, and that would have been for a more economically significant notional value. The consolidated last sale price disseminated pursuant to the CTA and UTP Plans similarly disregard odd lot executions in an effort to ensure that such last sale prices remain economically significant, even though the CTA and UTP Plans otherwise provide transparency into odd lot executions. The Exchange believes that it is similarly appropriate to limit the Exchange's last sale calculation, *i.e.*, the FLSET, to round lot executions to ensure that this value represents an economically significant last sale price to be utilized for the Exchange's auction processes. With this change, the Exchange's FLSET calculation will also be more aligned with other equities exchanges, such as NYSE Arca, Inc. ("Arca") that also disregard odd lot executions in similar situations.⁹ Arca's auction processes are not identical to those of the Exchange – *e.g.*, Arca uses a weighting of the consolidated last sale eligible trade and the time weighted average price of the NBBO midpoint to set the official closing price in certain circumstances.¹⁰ Nevertheless, Arca similarly excludes odd lot executions from its last sale formulation where relevant to its auction process. The Exchange believes that a

⁹ For example, the last consolidated round lot price is ordinarily used to set the reference price for trading halt auctions on Arca. See Arca Rule 7.35-E(a)(8)(A). Similarly, the consolidated last sale eligible trade, which as previously explained must be for a round lot, may be used in determining the official closing price on Arca. See Arca Rule 1.1(II)(1).

¹⁰ See Arca Rule 1.1(II)(1).

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

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

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

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

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.

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)¹¹ of the Act and Rule 19b-4(f)(6)¹² 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.¹³

The Exchange believes that the proposed rule change would not significantly affect the protection of investors or the public interest, and would not impose a significant burden on competition. The proposed rule change is designed to ensure that the FLSET – which is used for a number of important purposes – remains meaningful by excluding odd lots from the FLSET determination. Consolidated last sale prices published by the CTA and UTP securities information processors similarly exclude odd lot executions, and round lot prices are used by other exchanges for similar purposes.¹⁴ The Exchange therefore believes that the proposed rule change would provide a last sale

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See supra note 9.

calculation that is in line with other last sale calculations familiar to members and investors, and would assist in assuring a fair and orderly process for auctions in BZX-listed securities without introducing new or novel issues not already considered by the Commission. Therefore, the Exchange has accordingly designated this rule filing as “non-controversial” under Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁶

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. Rule 19b-4(f)(6)(iii), however, permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange respectfully requests that the Commission waive the operative delay. As previously explained, the Exchange currently uses a combination of both round lot and odd lot trades in calculating the FLSET, while other exchanges, such as Arca, disregard odd lot executions in similar situations.¹⁷ The Exchange believes that it is desirable to limit the FLSET to round lot executions as it would help to ensure that the FLSET represents an economically significant last sale price to be utilized for the Exchange’s auction processes. Waiver of the operative delay would allow the Exchange to promptly amend its rules to ensure that only round lot trades are eligible to set the FLSET, to the benefit of members and investors, and is therefore consistent with the protection of investors and the public interest.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 C.F.R. 240.19b-4.

¹⁷ See supra note 9.

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 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, in part, on the rules of Arca.

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-2019-095]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Definition of the Final Last Sale Eligible Trade (“FLSET”) Such That Odd Lot Trades Executed on BZX Would Not Be Eligible to Establish the FLSET for a Security

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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the definition of the Final Last Sale Eligible Trade (“FLSET”) such that odd lot

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

trades executed on BZX would not be eligible to establish the FLSET for a security. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

1. Purpose

The purpose of the proposed rule change is to amend the definition of the Final Last Sale Eligible Trade ("FLSET") such that odd lot trades executed on BZX would not be eligible to establish the FLSET for a security. The FLSET is used by the Exchange for a number of important purposes related to auctions in BZX-listed securities. For example, the FLSET sets the Halt Auction Reference Price for Halt Auctions following Non-LULD Regulatory Halts,⁵ and, in some cases, becomes the BZX Official Closing Price for a security where there is no Closing Auction, or where there is a Closing Auction but

⁵ See BZX Rule 11.23(d)(2)(C)(i)(B).

only an odd lot quantity is executed.⁶ Today, pursuant to BZX Rule 11.23(a)(9), the last trade occurring during Regular Trading Hours on the Exchange sets the FLSET if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. The last trade executed on BZX during Regular Trading Hours could be for a round lot or odd lot quantity. The Exchange believes, however, that it is undesirable for an odd lot execution that may be for an economically insignificant notional value to set the FLSET. The Exchange therefore proposes to amend BZX Rule 11.23(a)(9) such that the FLSET would be set by the last *round lot* trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted.

In addition, BZX Rule 11.23(a)(9) further provides that where the trade was not executed within the last one second, the last trade reported to the consolidated tape received by BZX Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. The Exchange proposes two changes to this language. First, the Exchange proposes to replace language that references “BZX Exchange” with simply “the Exchange” consistent with the defined term codified in BZX Rule 1.5(k) and used throughout the rulebook. Second, the Exchange proposes to amend the rule such that the last *round lot* trade reported to the consolidated tape received by the

⁶ See BZX Rule 11.23(c)(2)(B), (B)(ii)(a). For BZX-listed corporate securities, the FLSET would be the BZX Official Closing price if there is no Closing Auction. If there is no round lot Closing Auction in a BZX-listed ETP, the FLSET would be the BZX Official Closing Price if a trade that would qualify as the FLSET occurred within the last five minutes before the end of Regular Trading Hours, or if there is no such qualifying trade but a time-weighted average price of the NBBO midpoint cannot be determined pursuant to BZX Rule 11.23(c)(2)(B)(ii)(b).

Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. Although the Exchange has generally interpreted this requirement to convey that the last round lot trade reported to the consolidated tape, *i.e.*, consolidated last sale eligible trade, would set the FLSET, it is currently possible for an odd lot trade that was executed in the Exchange's Opening Auction to set the FLSET in limited circumstances where the opening print was the last reported trade. Thus, adding this language to the rule would both increase clarity now that odd lot trades are reported to the consolidated tape,⁷ and ensure that odd lot Opening Auctions would no longer be used to set the FLSET. Further, the proposed change would assist in conforming the descriptions in the rule given the changes previously discussed to the FLSET definition to explicitly reference round lot trades in the first part of the rule. As is the case today, if there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day would continue to be used.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,⁸ in general, and Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable

⁷ Historically, odd lot trades were not reported to the consolidated tape. In 2013, the CTA and UTP Plans were amended such that odd lot trades would be reported but would continue to be ineligible to set the consolidated last sale. See Securities Exchange Act Release Nos. 70794 (October 31, 2013), 78 FR 66789 (November 6, 2013) (SR-CTA-2013-05), 70793 (October 31, 2013), 78 FR 66788 (November 6, 2013) (S7-24-89).

⁸ 15 U.S.C. § 78f(b).

⁹ 15 U.S.C. § 78f(b)(5).

principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers.

The FLSET is the last sale formulation designed for use in BZX auctions pursuant to BZX Rule 11.23, and is used for a number of purposes including to set various reference prices, and in some cases to set the BZX Official Closing Price in the absence of a Closing Auction where sufficient size is executed to set the closing price. Given the importance of the FLSET to the Exchange's auction processes, the Exchange believes that it is consistent with the public interest and the protection of investors to eliminate odd lot executions from the FLSET determination. Today, as discussed in the purpose section of this proposed rule change, only round lot executions from other exchanges are eligible to establish the FLSET used by BZX but an odd lot trade on BZX would nevertheless be FLSET eligible if executed in the last one second, or in limited circumstances where an odd lot Opening Auction sets the last reported trade. Further, this may be true whether or not there is a round lot execution on the Exchange or another exchange that would otherwise have set the FLSET, and that would have been for a more economically significant notional value. The consolidated last sale price disseminated pursuant to the CTA and UTP Plans similarly disregard odd lot executions in an effort to ensure that such last sale prices remain economically significant, even though the CTA and UTP Plans otherwise provide transparency into odd lot executions. The Exchange believes that it is similarly appropriate to limit the Exchange's last sale calculation, *i.e.*, the FLSET, to round lot executions to ensure that this value represents an economically significant last sale price to be utilized for the Exchange's auction processes. With this change, the Exchange's FLSET calculation will also be more aligned with other equities

exchanges, such as NYSE Arca, Inc. (“Arca”) that also disregard odd lot executions in similar situations.¹⁰ Arca’s auction processes are not identical to those of the Exchange – *e.g.*, Arca uses a weighting of the consolidated last sale eligible trade and the time weighted average price of the NBBO midpoint to set the official closing price in certain circumstances.¹¹ Nevertheless, Arca similarly excludes odd lot executions from its last sale formulation where relevant to its auction process. The Exchange believes that a similar restriction would be appropriate for its FLSET formulation, notwithstanding any differences in the auction processes employed by each exchange.

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

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the FLSET continues to be a meaningful value to be used for auctions in BZX-listed securities. The Exchange believes the proposed changes would improve the experience of members and investors

¹⁰ For example, the last consolidated round lot price is ordinarily used to set the reference price for trading halt auctions on Arca. See Arca Rule 7.35-E(a)(8)(A). Similarly, the consolidated last sale eligible trade, which as previously explained must be for a round lot, may be used in determining the official closing price on Arca. See Arca Rule 1.1(II)(1).

¹¹ See Arca Rule 1.1(II)(1).

trading on the Exchange without imposing any significant burden on competition. In today's highly competitive market, the Exchange must continually refine its offerings to ensure the best trading experience for members and investors. Rather than burden competition, the Exchange believes that the proposed rule change is evidence of robust competition between equities markets that benefits the industry.

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

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

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

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. 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 Act¹² and Rule 19b-4(f)(6)¹³ 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.

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 17 CFR 240.19b-4(f)(6).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-095 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CboeBZX-2019-095. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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-2019-095 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Secretary

¹⁴ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

Rules of Cboe BZX Exchange, Inc.

* * *

Rule 11.23 Auctions

(a) Definitions

* * *

(9) The term “Final Last Sale Eligible Trade” shall mean the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last round lot trade reported to the consolidated tape received by [BZX] the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used.

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