

OMB APPROVAL

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

File No.* SR - 2020 - * 033

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

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



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 amend its Fee Schedule.

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 04/08/2020

By Laura G. Dickman

(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.

ldickman@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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 *

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

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

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

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

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Exhibit Sent As Paper Document

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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.

Item 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 its Fee Schedule. 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.

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 31, 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 its fee schedule for its equity options platform (“BZX Options”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Exchange initially filed the proposed fee changes on April 1, 2020 (SR-CboBZX-2020-030). On April 8, 2020, the Exchange withdrew that filing and submitted this filing.

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 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 21% of the market share and currently the Exchange represents only 12% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard rebate of \$0.29 per contract for Market Maker orders that add liquidity in Penny Pilot Securities and a standard rebate of \$0.40 per contract in Non-Penny Pilot Securities. Additionally, the Exchange assesses a standard fee of \$0.50 per contract for non-Customer orders that remove liquidity in Penny Pilot Securities and a standard fee of \$1.07 per contract in Non-Penny Pilot Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered

⁴ See Cboe Global Markets U.S. Options Market Volume Summary (March 27, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

pricing, as discussed in further detail in the following paragraphs, 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.

Non-Customer Penny Pilot Take Volume Tiers

The Exchange currently offers three Non-Customer Penny Pilot Take Volume Tiers under footnote 3 of the Fee Schedule which provides reduced fees between \$0.44 and \$0.47 per contract for qualifying non-Customer orders which meet certain add liquidity thresholds and yield fee code PP.⁵

Under current Non-Customer Penny Pilot Take Volume Tier 1, a Member receives a reduced fee of \$0.44 per contract where the Member (1) has an average daily added volume (“ADAV”)⁶ in Customer orders greater than or equal to 0.80% of average options consolidated volume (“OCV”),⁷ (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV⁸

⁵ Orders yielding fee code PP are non-Customer orders that remove liquidity in Penny Pilot securities.

⁶ ADAV means average daily added volume calculated as the number of contracts added per day.

⁷ OCV means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

⁸ ADAV on BZX Equities means average daily added volume calculated as the number of shares added per day.

greater than or equal to 0.30% of average total consolidated volume (“TCV”);⁹ and (4) has an ADAV in Customer Non-Penny orders greater than or equal to 0.05% of average OCV. Now, the Exchange proposes to increase the applicable fee and modify thresholds (3) and (4) of Tier 1 listed previously. Accordingly, under the proposed thresholds for Tier 1 a Member would receive a reduced fee of \$0.45 per contract where the Member (1) has an ADAV in Customer orders greater than or equal to 0.80% of average OCV; (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV or greater than or equal to 1.00% of average TCV; and (4) has an ADAV in Customer Non-Penny orders greater than or equal to 0.10% of average OCV.

Under current Non-Customer Penny Take Volume Tier 3, a Member receives a reduced fee of \$0.44 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 1.70% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.30% of average OCV. Now, the Exchange proposes to increase the fee and modify thresholds (1) and (2) associated with Tier 3. Accordingly, under the proposed thresholds for Tier 3 a Member would receive a reduced fee of \$0.45 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 2.00% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.40% of average OCV.

Although the proposed fees and thresholds under Tier 1 and 3 of the Non-Customer Penny Take Volume Tiers are higher and more stringent than the current fees

⁹ TCV on BZX Equities means average daily added volume calculated as the number of displayed shares added that establish a new National Best Bid and Offer (“NBBO”) as a percentage of TCV.

for such tiers, Members will still have an opportunity to receive a reduced fee for meeting the applicable tier thresholds which are in line with similar fees for non-Customer orders in place on other options exchanges.¹⁰

Based on the above proposed changes, the Exchange also proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

Market-Maker Penny Pilot Add Volume Tiers

The Exchange currently offers 10 Market Maker Penny Pilot Add Volume Tiers under footnote 6 of the fee schedule which provide rebates between \$0.33 and \$0.46 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code PM.¹¹

Under current Tier 9 of the Market Maker Penny Pilot Add Volume Tiers, a Member receives a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV; (2) has on BZX Equities an ADV of equal to or greater than 0.60% of average TCV; and (3) has a step-up ADAV in Market maker orders from December 2019 of equal to or greater than 0.05% of average OCV. Now, the Exchange proposes to modify existing thresholds (1) and (2), eliminate threshold (3), and add a new threshold. Specifically, under the proposed thresholds for Tier 9, a Member would receive a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders equal to or greater than 0.50% of

¹⁰ See e.g., NYSE Arca imposes a fee of \$0.50 per contract for non-Customer orders that remove liquidity. Similarly, Nasdaq imposes a fee ranging from \$0.48 up to \$0.50 for non-customer orders that remove liquidity.

¹¹ Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Pilot securities.

average OCV; (2) has an ADAV in Market Maker Non-Penny orders of equal to or greater than 0.15% of average OCV; and (3) has on BZX Equities an ADV of equal to or greater than 1.00% of average TCV.

Although the proposed changes to Tier 9 of the Market Maker Penny Pilot Add Volume Tiers is more stringent than the current tier, the Exchange believes it provides an incremental incentive proportionate to the proposed rebate. Furthermore, the proposed criteria is similar to existing criteria on the Exchange.¹²

In addition to the above, the Exchange proposes to modify Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers in order to clarify that the applicable average daily removed volume (“ADRV”)¹³ criteria is applicable only to Market Maker orders.¹⁴

Market Maker Non-Penny Add Volume Tier

The Exchange currently offers three Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7 of the fee schedule which provides enhanced rebates between \$0.45 and \$0.86 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code NM.¹⁵

¹² See Tier 2 of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7).

¹³ ADRV means average daily removed volume calculated as the number of contracts removed.

¹⁴ The Exchange notes it inadvertently failed to specify in the Fees Schedule that the ADRV volume was applicable to Market Maker orders only, but did address the requirement in the rule filing when Tiers 3, 6 and 8 were adopted. See Securities Exchange Act No. 85846 (May 13, 2019) 84 FR 22546 (May 17, 2019) (SR-CboeBZX-2019-038).

¹⁵ Orders yielding fee code NM are Market Maker orders that add liquidity in Non-Penny Pilot securities.

Under the current Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers, a Member receives an enhanced rebate of \$0.86 per contract where the Member has (1) an ADAV in Market Maker orders greater or equal to 1.00% of average OCV and an ADAV in Market Maker non-penny orders of greater or equal to a 0.20% of average OCV. Now, the Exchange proposes to modify the rebate and threshold (2) of Tier 3. Specifically, under the proposal a Member would receive a rebate of \$0.88 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 1.00% of average OCV; and (2) has an ADAV in Market Maker Non-Penny orders of greater than or equal to 0.10% of average OCV. Additionally, the Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

The proposed changes to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers are designed to encourage a Market Maker's liquidity adding volume in Non-Penny orders, and moreover to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹⁶ in general, and furthers the requirements of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers,

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

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 changes reflect 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 modifications to the Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers is reasonable because it provides an additional opportunity for Members to receive a higher rebate or lower fee by providing additional criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,¹⁸ including the Exchange,¹⁹ 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 market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order

¹⁸ See e.g., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between \$0.01 and \$0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

¹⁹ See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Volume Tiers which provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

flow, and it represents a small percentage of the overall market. Competing options 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.

Moreover, the Exchange believes the proposed changes are a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange believes that the modified criteria to certain of the existing Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers may encourage Members to increase their order flow on the Exchange. 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 changes are reasonable based on the difficulty of satisfying each tier's criteria and ensures the proposed rebate/fee and threshold appropriately reflects the incremental difficulty to achieve the applicable tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to either non-Customer or Market Maker orders, as applicable. Further, the Exchange provides for similar standard fees to Customer²⁰ orders for liquidity removing volume in Penny Pilot securities as

²⁰ See the Standard Rates table which provides that Customer orders that remove liquidity in Penny Pilot securities incur a fee of \$0.50 per contract.

compared to proposed modified Tiers 1 and 3 of the Non-Customer Penny Pilot Take Volume Tiers. Similarly, the Exchange offers similar tiers to Joint-Back Office,²¹ Away Market Maker,²² and Customer²³ orders for liquidity adding volume in both Penny Pilot and Non-Penny Pilot securities as compared to proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers.

Additionally, a number of Non-Customers have a reasonable opportunity to satisfy the proposed modified Tier 1 and Tier 3 of the Non-Customer Penny Pilot Take Volume Tiers, which the Exchange believes are more stringent than existing Tier 1 and Tier 3. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Non-Customer qualifying for the proposed modified tiers, the Exchange anticipates at least two Members to compete for and reasonably achieve each the proposed modified tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

²¹ See e.g., the Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$0.82 per contract to Members satisfying the tier.

²² See e.g., the Away Market Maker Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 2 offers a rebate of up to \$0.52 per contract to Members satisfying the tier.

²³ See e.g., the Customer Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$1.05 per contract to Members satisfying the tier.

Similarly, a number of Market Makers have a reasonable opportunity to satisfy the proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers (footnote 6) and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7). While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed modified tiers, the Exchange anticipates at least three Market Makers to compete for and reasonably achieve proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and at least one Market Maker to compete for and reasonably achieve proposed modified Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange believes the proposed modified tiers could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate or reduced fee. Furthermore, the proposed enhanced rebate or reduced fee would apply to all Members that meet the required criteria under the applicable proposed tier of Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers.

Lastly, the Exchange notes that the proposed changes to Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers is non-substantive and is merely intended to provide clarity to market participants that the ADRV criteria is applied based on

Market Maker orders. As such, the Exchange believes that the proposed changes would eliminate any potential confusion.

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 changes 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."²⁴

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 changes apply to all Members equally in that all Members are eligible for the proposed modified tiers, have a reasonably opportunity to meet each tier's criteria and will all receive the proposed reduced fee or enhanced rebate if such criteria is met. Although the proposed changes to the Non-Customer Penny Pilot Take Volume Tiers 1 and 3 and Tier 9 of the Market Maker Penny Pilot Add Volume Tiers are more stringent than the current applicable tier, the Exchange believes they provide an incremental incentive proportionate to the proposed rebate or

²⁴ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

reduced fee. Furthermore, the Exchange believes the proposed modifications to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers will encourage Members to increase their order flow in Non-Penny Pilot securities on the Exchange. 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 believes the proposed rule changes to Tiers 3, 6, and 8 will have no impact on intramarket competition as the proposed changes are non-substantive.

Next, the Exchange believes the proposed rule changes do 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 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 21% of the market share.²⁵ 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

²⁵ Supra note 3.

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.”²⁶ 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’”²⁷ Accordingly, the Exchange does not believe its proposed fee changes impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁷ *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 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 Act²⁸ and Rule 19b-4(f)(2)²⁹ 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.

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.

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f)(2).

**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-2020-033]

[Insert date]

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

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. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform ("BZX Options").³

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 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 21% of the market share and currently the Exchange represents only 12% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting

³ The Exchange initially filed the proposed fee changes on April 1, 2020 (SR-CboBZX-2020-030). On April 8, 2020, the Exchange withdrew that filing and submitted this filing.

⁴ See Cboe Global Markets U.S. Options Market Volume Summary (March 27, 2020), available at https://markets.cboe.com/us/options/market_statistics/.

market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard rebate of \$0.29 per contract for Market Maker orders that add liquidity in Penny Pilot Securities and a standard rebate of \$0.40 per contract in Non-Penny Pilot Securities. Additionally, the Exchange assesses a standard fee of \$0.50 per contract for non-Customer orders that remove liquidity in Penny Pilot Securities and a standard fee of \$1.07 per contract in Non-Penny Pilot Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, as discussed in further detail in the following paragraphs, 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.

Non-Customer Penny Pilot Take Volume Tiers

The Exchange currently offers three Non-Customer Penny Pilot Take Volume Tiers under footnote 3 of the Fee Schedule which provides reduced fees between \$0.44 and \$0.47 per contract for qualifying non-Customer orders which meet certain add liquidity thresholds and yield fee code PP.⁵

⁵ Orders yielding fee code PP are non-Customer orders that remove liquidity in

Under current Non-Customer Penny Pilot Take Volume Tier 1, a Member receives a reduced fee of \$0.44 per contract where the Member (1) has an average daily added volume (“ADAV”)⁶ in Customer orders greater than or equal to 0.80% of average options consolidated volume (“OCV”),⁷ (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV⁸ greater than or equal to 0.30% of average total consolidated volume (“TCV”);⁹ and (4) has an ADAV in Customer Non-Penny orders greater than or equal to 0.05% of average OCV. Now, the Exchange proposes to increase the applicable fee and modify thresholds (3) and (4) of Tier 1 listed previously. Accordingly, under the proposed thresholds for Tier 1 a Member would receive a reduced fee of \$0.45 per contract where the Member (1) has an ADAV in Customer orders greater than or equal to 0.80% of average OCV; (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV or greater than or equal to 1.00% of average TCV; and (4) has an ADAV in Customer Non-Penny orders greater than or equal to 0.10% of average OCV.

Penny Pilot securities.

⁶ ADAV means average daily added volume calculated as the number of contracts added per day.

⁷ OCV means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (“OCC”) for the month for which the fees apply, excluding volume on any day that the exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

⁸ ADAV on BZX Equities means average daily added volume calculated as the number of shares added per day.

⁹ TCV on BZX Equities means average daily added volume calculated as the number of displayed shares added that establish a new National Best Bid and Offer (“NBBO”) as a percentage of TCV.

Under current Non-Customer Penny Take Volume Tier 3, a Member receives a reduced fee of \$0.44 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 1.70% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.30% of average OCV. Now, the Exchange proposes to increase the fee and modify thresholds (1) and (2) associated with Tier 3. Accordingly, under the proposed thresholds for Tier 3 a Member would receive a reduced fee of \$0.45 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 2.00% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.40% of average OCV.

Although the proposed fees and thresholds under Tier 1 and 3 of the Non-Customer Penny Take Volume Tiers are higher and more stringent than the current fees for such tiers, Members will still have an opportunity to receive a reduced fee for meeting the applicable tier thresholds which are in line with similar fees for non-Customer orders in place on other options exchanges.¹⁰

Based on the above proposed changes, the Exchange also proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

Market-Maker Penny Pilot Add Volume Tiers

The Exchange currently offers 10 Market Maker Penny Pilot Add Volume Tiers under footnote 6 of the fee schedule which provide rebates between \$0.33 and \$0.46 per

¹⁰ See e.g., NYSE Arca imposes a fee of \$0.50 per contract for non-Customer orders that remove liquidity. Similarly, Nasdaq imposes a fee ranging from \$0.48 up to \$0.50 for non-customer orders that remove liquidity.

contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code PM.¹¹

Under current Tier 9 of the Market Maker Penny Pilot Add Volume Tiers, a Member receives a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV; (2) has on BZX Equities an ADV of equal to or greater than 0.60% of average TCV; and (3) has a step-up ADAV in Market maker orders from December 2019 of equal to or greater than 0.05% of average OCV. Now, the Exchange proposes to modify existing thresholds (1) and (2), eliminate threshold (3), and add a new threshold. Specifically, under the proposed thresholds for Tier 9, a Member would receive a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders equal to or greater than 0.50% of average OCV; (2) has an ADAV in Market Maker Non-Penny orders of equal to or greater than 0.15% of average OCV; and (3) has on BZX Equities an ADV of equal to or greater than 1.00% of average TCV.

Although the proposed changes to Tier 9 of the Market Maker Penny Pilot Add Volume Tiers is more stringent than the current tier, the Exchange believes it provides an incremental incentive proportionate to the proposed rebate. Furthermore, the proposed criteria is similar to existing criteria on the Exchange.¹²

In addition to the above, the Exchange proposes to modify Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers in order to clarify that the applicable

¹¹ Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Pilot securities.

¹² See Tier 2 of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7).

average daily removed volume (“ADRV”)¹³ criteria is applicable only to Market Maker orders.¹⁴

Market Maker Non-Penny Add Volume Tier

The Exchange currently offers three Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7 of the fee schedule which provides enhanced rebates between \$0.45 and \$0.86 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code NM.¹⁵

Under the current Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers, a Member receives an enhanced rebate of \$0.86 per contract where the Member has (1) an ADAV in Market Maker orders greater or equal to 1.00% of average OCV and an ADAV in Market Maker non-penny orders of greater or equal to a 0.20% of average OCV. Now, the Exchange proposes to modify the rebate and threshold (2) of Tier 3. Specifically, under the proposal a Member would receive a rebate of \$0.88 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 1.00% of average OCV; and (2) has an ADAV in Market Maker Non-Penny orders of greater than or equal to 0.10% of average OCV. Additionally, the Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange’s Fee Schedule.

¹³ ADRV means average daily removed volume calculated as the number of contracts removed.

¹⁴ The Exchange notes it inadvertently failed to specify in the Fees Schedule that the ADRV volume was applicable to Market Maker orders only, but did address the requirement in the rule filing when Tiers 3, 6 and 8 were adopted. See Securities Exchange Act No. 85846 (May 13, 2019) 84 FR 22546 (May 17, 2019) (SR-CboeBZX-2019-038).

¹⁵ Orders yielding fee code NM are Market Maker orders that add liquidity in Non-Penny Pilot securities.

The proposed changes to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers are designed to encourage a Market Maker's liquidity adding volume in Non-Penny orders, and moreover to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,¹⁶ in general, and furthers the requirements of Section 6(b)(4),¹⁷ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among 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 changes reflect 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 modifications to the Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers is reasonable because it provides an additional opportunity for Members to receive a higher rebate or lower fee by providing additional criteria they can reach for. The Exchange notes that volume-based incentives

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(4).

and discounts have been widely adopted by exchanges,¹⁸ including the Exchange,¹⁹ 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 market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options 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.

Moreover, the Exchange believes the proposed changes are a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange believes that the modified criteria to certain of the existing Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers may encourage Members to increase their order flow on the Exchange. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings,

¹⁸ See e.g., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between \$0.01 and \$0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

¹⁹ See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Volume Tiers which provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed changes are reasonable based on the difficulty of satisfying each tier's criteria and ensures the proposed rebate/fee and threshold appropriately reflects the incremental difficulty to achieve the applicable tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to either non-Customer or Market Maker orders, as applicable. Further, the Exchange provides for similar standard fees to Customer²⁰ orders for liquidity removing volume in Penny Pilot securities as compared to proposed modified Tiers 1 and 3 of the Non-Customer Penny Pilot Take Volume Tiers. Similarly, the Exchange offers similar tiers to Joint-Back Office,²¹ Away Market Maker,²² and Customer²³ orders for liquidity adding volume in both Penny Pilot and Non-Penny Pilot securities as compared to proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers.

Additionally, a number of Non-Customers have a reasonable opportunity to satisfy the proposed modified Tier 1 and Tier 3 of the Non-Customer Penny Pilot Take

²⁰ See the Standard Rates table which provides that Customer orders that remove liquidity in Penny Pilot securities incur a fee of \$0.50 per contract.

²¹ See e.g., the Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$0.82 per contract to Members satisfying the tier.

²² See e.g., the Away Market Maker Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 2 offers a rebate of up to \$0.52 per contract to Members satisfying the tier.

²³ See e.g., the Customer Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$1.05 per contract to Members satisfying the tier.

Volume Tiers, which the Exchange believes are more stringent than existing Tier 1 and Tier 3. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Non-Customer qualifying for the proposed modified tiers, the Exchange anticipates at least two Members to compete for and reasonably achieve each the proposed modified tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

Similarly, a number of Market Makers have a reasonable opportunity to satisfy the proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers (footnote 6) and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7). While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed modified tiers, the Exchange anticipates at least three Market Makers to compete for and reasonably achieve proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and at least one Market Maker to compete for and reasonably achieve proposed modified Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange believes the proposed modified tiers could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other tiers. Rather, should a Member not

meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate or reduced fee. Furthermore, the proposed enhanced rebate or reduced fee would apply to all Members that meet the required criteria under the applicable proposed tier of Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers.

Lastly, the Exchange notes that the proposed changes to Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers is non-substantive and is merely intended to provide clarity to market participants that the ADRV criteria is applied based on Market Maker orders. As such, the Exchange believes that the proposed changes would eliminate any potential confusion.

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 changes 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."²⁴

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

²⁴ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

purposes of the Act. Particularly, the proposed changes apply to all Members equally in that all Members are eligible for the proposed modified tiers, have a reasonably opportunity to meet each tier's criteria and will all receive the proposed reduced fee or enhanced rebate if such criteria is met. Although the proposed changes to the Non-Customer Penny Pilot Take Volume Tiers 1 and 3 and Tier 9 of the Market Maker Penny Pilot Add Volume Tiers are more stringent than the current applicable tier, the Exchange believes they provide an incremental incentive proportionate to the proposed rebate or reduced fee. Furthermore, the Exchange believes the proposed modifications to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers will encourage Members to increase their order flow in Non-Penny Pilot securities on the Exchange. 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 believes the proposed rule changes to Tiers 3, 6, and 8 will have no impact on intramarket competition as the proposed changes are non-substantive.

Next, the Exchange believes the proposed rule changes do 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 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more

than 21% of the market share.²⁵ 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.”²⁶ 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’”²⁷ Accordingly, the Exchange does not

²⁵ Supra note 3.

²⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁷ *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)).

believe its proposed fee changes impose 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 Act²⁸ and paragraph (f) of Rule 19b-4²⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

²⁸ 15 U.S.C. 78s(b)(3)(A).

²⁹ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-033 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-2020-033. 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-2020-033 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.³⁰

Secretary

³⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Rules of Cboe BZX Exchange, Inc.

Fees Schedule

* * * * *

Cboe BZX Options Exchange Fee Schedule**Effective April [1]8, 2020**

* * * * *

Standard Rates:

	Penny Pilot Securities				Non-Penny Pilot Securities			
	Add		Remove		Add		Remove	
	Code	Rates	Code	Rates	Code	Rates	Code	Rates
Customer	PY	(\$0.25) (\$0.35) (\$0.48) (\$0.51) (\$0.52) (\$0.53)	PC	\$0.50	NY	(\$0.85) (\$0.92) (\$1.00) (\$1.02) (\$1.05)	NC	\$0.85
Professional	PA	(\$0.25) (\$0.42) (\$0.44) (\$0.46) (\$0.48)	PP	\$0.50 \$0.47 \$0.4[4]5	NA	(\$0.65)	NP	\$1.10 \$1.07
Firm/BD/JBO	PF	(\$0.25) (\$0.38) (\$0.46)			NF	(\$0.30) (\$0.33) (\$0.53) (\$0.82)		
Market Maker	PM	(\$0.29) (\$0.33) (\$0.40) (\$0.41) (\$0.42) (\$0.46)			NM	(\$0.40) (\$0.45) (\$0.54) (\$0.8[6]8)		

Away Market Maker	PN	(\$0.26) (\$0.38) (\$0.45)			NN	(\$0.30) (\$0.40) (\$0.52)		
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³ Non-Customer Penny Pilot Take Volume Tiers

Applicable to fee code PP.

Tier	Fee Per Contract to Remove	Required Criteria
Tier 1	\$0.4[4]5	<p>(1) Member has an ADAV in Customer orders \geq 0.80% of average OCV;</p> <p>(2) Member has an ADAV in Market Maker orders \geq 0.35% of average OCV; [and]</p> <p>(3) Member has on BZX Equities an ADAV \geq [0]1.[3]00% of average TCV; <u>and</u></p> <p>(4) Member has an ADAV in Customer Non-Penny orders \geq 0.10[5]% of average OCV</p>
* * * * *		
Tier 3	\$0.4[4]5	<p>(1) Member has an ADAV in Customer orders \geq [1.7]2.00% of average OCV; <u>and</u></p> <p>(2) Member has an ADAV in Customer Non-Penny orders \geq 0.[3]40% of average OCV</p>

* * * * *

⁶ Market Maker Penny Pilot Add Volume Tiers

Applicable to fee code PM.

Tier	Rebate Per Contract to Add	Required Criteria

Tier 3	(\$0.40)	<p>(1) Member has an ADAV in Market Maker orders \geq 0.15% of average OCV; and</p> <p>(2) Member has an ADRV <u>in Market Maker orders</u> \geq 0.15% of average OCV</p>

Tier 6	(\$0.41)	<p>(1) Member has an ADAV in Market Maker orders \geq 0.25% of average OCV; and</p> <p>(2) Member has an ADRV <u>in Market Maker orders</u> \geq 0.25% of average OCV</p>

Tier 8	(\$0.42)	<p>(1) Member has an ADAV in Market Maker orders \geq 0.35% of average OCV; and</p> <p>(2) Member has an ADRV <u>in Market Maker orders</u> \geq 0.35% of average OCV</p>
Tier 9	(\$0.44)	<p>(1) Member has an ADAV in Market Maker orders \geq 0.[1]50% of average OCV;</p> <p>(2) Member has an ADAV <u>in Market Maker Non-Penny orders</u> \geq 0.15% of average OCV; and</p> <p>([2]3) Member has on BZX Equities an ADV \geq [0]1.[6]00% of average TCV; and</p>

		(3) Member has a step-up ADAV in Market Maker orders from December 2019 $\geq 0.05\%$ of average OCV]
* * * * *		

⁷ Market Maker Non-Penny Pilot Add Volume Tiers

Applicable to fee code NM.

Tier	Rebate Per Contract to Add	Required Criteria
* * * * *		
Tier 3	(\$0.8[6]8)	<p>(1) Member has an ADAV in Market Maker orders $\geq 1.00\%$ of average OCV; and</p> <p>(2) Member has an ADAV in Market Maker Non-Penny orders of $\geq 0.[2]10\%$ of average OCV</p>

* * * * *