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

File No. * SR 2021 - * 073

Amendment No. (req. for Amendments *)

Filing by Cboe BZX Exchange, Inc.

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

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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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 type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
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 how the BZX Official Closing Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b).

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 of 1934, Cboe BZX Exchange, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date 11/09/2021

(Title *)

By Kyle Murray

VP, Associate General Counsel

(Name *)

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

Kyle Murray Date: 2021.11.09 16:13:47 -06'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

21-073 19b-4 - (f)(6) (OCP Amendmen

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

21-073 Exhibit 1 (OCP Amendment).d

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 Advanced 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 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

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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

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 Sent As Paper Document

Exhibit 4 - Marked Copies

Add Remove View

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

21-073 Exhibit 5 (OCP Amendment).d

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 the provisions of 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 how the BZX Official Closing Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b). The text of the proposed rule change is provided in Exhibit 5.

(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 October 18, 2021.

(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 BZX Rule 11.23, Auctions, to modify how the BZX Official Closing Price,³ which is the price disseminated to the consolidated tape as the market center closing trade, would be determined for any BZX-listed security that is not a corporate security (i.e., an Exchange-Traded Product (“ETP”) as provided in Exchange Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Exchange Rule 11.23(a)(3).

14.11, also referred to as a “Derivative Securities Product”), as set forth in Rule 11.23(c)(2)(B)(ii)(b). The proposal is substantively identical to the process described in Nasdaq Stock Market LLC (“Nasdaq”) Rule 4754(b)(4)(A)(ii)⁴ and substantially similar to the process described in NYSE Arca, Inc. (“Arca”) Rule 1.11(II).⁵ Further, this provision of Rule 11.23(c)(2)(B)(ii)(b) is only used to determine the BZX Official Closing Price and does not impact any executions in the Closing Auction. Such provision also only applies where there is less than one round lot executed in the Closing Auction and where there has not been a trade that would qualify as a Final Last Sale Eligible Trade within the final five minutes before the end of Regular Trading Hours.

Rule 11.23(c)(2)(B)(i) through (iii) sets forth how the BZX Official Closing Price for Derivative Securities Products is determined. Paragraph (B)(i) provides that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price. Paragraph (B)(ii) provides that in the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i), the BZX Official Closing Price for such security will depend on when the last consolidated last-sale trade occurs. Specifically, if a trade that would qualify as a Final Last Sale Eligible Trade⁶

⁴ Infra note 12 and accompanying text.

⁵ Infra note 13 and accompanying text.

⁶ 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 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. See BZX Rule 11.23(a)(9).

occurred (a) within the final five minutes before the end of Regular Trading Hours,⁷ the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price (“TWAP”) of the National Best Bid or Offer⁸ (“NBBO”) midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing Price. Paragraph (B)(iii) provides that if the BZX Official Closing Price cannot be determined under paragraphs (B)(i) or (B)(ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

The Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) in order to change how the BZX Official Closing Price is calculated using the TWAP of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours. Under current functionality, the Exchange uses all NBBO quotes during the last five minutes of Regular Trading Hours to determine the BZX Official Closing Price, which could result in setting a BZX Official Closing Price that is not necessarily reflective of a Derivative Securities Product’s reasonable market value. Given this, the Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) to exclude from the TWAP calculation a midpoint that is based on an NBBO that is not reflective of the security’s true and current value. As proposed, the Exchange would exclude a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price. The Exchange would also exclude a crossed NBBO from the calculation.⁹

⁷ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BZX Rule 1.5(w).

⁸ See BZX Rule 1.5(o).

⁹ As provided in Rule 11.20(a)(2), the term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is

The proposed amendment to adopt an NBBO midpoint check is designed to validate whether an NBBO used in the calculation of the BZX Official Closing Price bears a relation to the value of the value of the Derivative Securities Product. Under the proposal, the Exchange would calculate the midpoint of the NBBO and then multiply the midpoint by ten percent (10%) and compare this value to the spread of the NBBO. If the value of the midpoint when multiplied by ten percent (10%) is less than the spread of that NBBO, the Exchange would exclude the quote from the NBBO midpoint calculation. The Exchange believes that if the NBBO spread is greater than the value of the midpoint when multiplied by ten percent (10%), it would indicate that the spread is too wide, and therefore not representative of the value of the security. For example: If the NBBO is \$19.99 x \$20.01, and thus the NBBO midpoint is \$20, validation logic would allow a maximum quote width up to \$2 to be used as part of the calculation ($\$20.00 * 10\% = \2). If the NBBO was \$17.00 x \$23.00, and thus the NBBO midpoint is \$20.00, the quote would not be used in the midpoint calculation because it violates the maximum quote width ($\$20.00 * 10\% = \2). If there are no eligible quotes to determine a TWAP within the time period or if the ETP is halted, then Exchange will determine the BZX Official Closing Price as provided under existing Rule 11.23(c)(2)(B)(iii).

The Exchange plans to implement the proposed rule change during the fourth quarter of 2021, and will announce the implementation date via Trade Desk Notice.

higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide for a BZX Official Closing Price that is more reflective of the current market value of an ETP on that trading day. Further, it will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide for a more robust mechanism to determine the value of an ETP for purposes of determining the BZX Official Closing Price.

The proposed functionality is substantively identical to functionality that has already been approved by the Commission and is operational on another Exchange. Specifically, Nasdaq Rule 4754(b)(4)(A)(ii) provides that where a time-weighted average midpoint (“T-WAM”) calculation is reflected as the Nasdaq official closing price, the T-WAM calculation will only use an “eligible quote”, which is defined as a quote whose spread is no greater than a value of 10% of the midpoint price, and will exclude crossed

¹⁰ 15 U.S.C. 78f(b).

¹¹ 15 U.S.C. 78f(b)(5).

NBBO markets.¹² The proposal is also substantially similar to Arca Rule 1.1(l)(1)(B) except the Exchange proposes to exclude a quote when the spread is greater than a value of 10% of the midpoint price and Arca Rule 1.1(l)(1)(B) excludes a midpoint. Specifically, Arca Rule 1.1(l)(1)(B) provides that for the purpose of deriving the official closing price using a TWAP calculation, Arca will exclude 1) an NBBO midpoint from the calculation if that midpoint, when multiplied by 10%, is less than the spread of that NBBO, and 2) a crossed NBBO.¹³ Therefore, the Exchange's proposal to exclude from the TWAP calculation provided under Rule 11.23(c)(2)(B)(ii)(b) a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price, is substantively identical to existing functionality on Nasdaq and substantially similar to existing functionality on Arca and thus does not present any new or novel issues.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

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 competition that is not necessary or appropriate in furtherance of the purposes

¹² See Nasdaq Rule Nasdaq Rule 4754(b)(4)(A)(ii). See also Securities and Exchange Act No. 87486 (November 7, 2019) 84 FR 61952 (November 14, 2019) (SR-NASDAQ-2019-061) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products).

¹³ See Arca Rule 1.1(l)(1)(B). See also Securities Exchange Act No. 84471 (October 23, 2018) 83 FR 54384 (October 29, 2018) (SR-NYSEArca-2018-63) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 1.1(l) To Modify the Formula for Establishing the Official Closing Price for a Derivative Securities Product When There Is No Closing Auction or if the Closing Auction Is Less Than One Round Lot, by Excluding the NBBO Midpoint if the Midpoint Multiplied by 10% Is Less Than the NBBO Spread or if the NBBO Is Crossed).

of the Act. The proposed rule change is designed to ensure that the BZX Official Closing Price of BZX-listed Derivative Securities Products is calculated, pursuant to Rule 11.23(c)(2)(B)(ii)(b), at a price that is reasonably reflective of the market value of the security. The Exchange believes the proposed changes would improve the experience of market participants trading on the Exchange without imposing any significant burden on competition as the proposal would simply create a process to validate the NBBO midpoint used to determine the Official Closing Price by comparing the midpoint value to the spread of the NBBO, and if the NBBO midpoint is not within the proposed parameters, to exclude the quote from the calculation. The proposal would ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate basis for determining the Official Closing Price. Further, as the proposal is designed to ensure the BZX Official Closing Price calculated pursuant to Exchange Rule 11.23(c)(2)(B)(ii)(b) accurately reflects the supply and demand in the Derivative Securities Product, the Exchange believes the proposal will help it better compete as a listing venue.

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act¹⁴ and Rule 19b-4(f)(6)¹⁵ thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 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. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange does not believe the proposed rule change to modify how the BZX Official Closing Price is determined pursuant to Rule 11.23(c)(2)(B)(ii)(b) would significantly affect the protection of investors because it will provide for a BZX Official Closing Price that, in certain circumstances, is more reflective of the current market value of an ETP on that trading day and will provide for a more robust mechanism to determine the value of an affected ETP for purposes of determining the BZX Official Closing Price. The proposed rule change does not raise any new or novel issues for investors or the

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

public interest because, as stated above, the proposal is substantively identical to Nasdaq Rule 4754(b)(4)(A)(ii)¹⁶ and substantially similar to Arca Rule 1.1(II).¹⁷

The Exchange does not believe that the proposed rule change will impose any significant burden on competition because the proposal would simply provide for safeguards to ensure that the BZX Official Closing Price is set near the reasonable market value of the Derivative Securities Product. Further, as the proposal is designed to ensure the BZX Official Closing Price calculated pursuant to Exchange Rule 11.23(c)(2)(B)(ii)(b) accurately reflects the supply and demand in the Derivative Securities Product, the Exchange believes the proposal will help it better compete as a listing venue.

For the foregoing reasons, this rule filing qualifies as a “non-controversial” rule change under Rule 19b-4(f)(6), which renders the proposed rule change effective upon filing with 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. The Exchange respectfully requests that the Commission waive the 30-day operative delay period after which a proposed rule change under Rule 19b-4(f)(6) becomes effective. Such a waiver would allow the Exchange to implement the proposal as soon as possible.

¹⁶ Supra note 12.

¹⁷ Supra note 13.

Furthermore, as the proposal is substantively identical to Nasdaq Rule 4754(b)(4)(A)(ii)¹⁸ and substantially similar to Arca Rule 1.1(II),¹⁹ the proposal presents no novel issues. Therefore, waiver of the operative delay is consistent with the protection of investors and the public interest.

(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 substantively identical to functionality described in Nasdaq Rule 4754(b)(4)(A)(ii)²⁰ and substantially similar to functionality described in Arca Rule 1.11(II).²¹

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

Not applicable.

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

Not applicable.

Item 11. Exhibits

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

Exhibit 5. Proposed rule text.

¹⁸ Supra note 12.

¹⁹ Supra note 13.

²⁰ Supra note 12.

²¹ Supra note 13.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2021-073]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend how the BZX Official Closing Price is Determined for a BZX-Listed Security that is not a Corporate Security, Pursuant to Rule 11.23(c)(2)(B)(ii)(b)

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. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend how the BZX Official Closing Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b). The text of the proposed rule change is provided in Exhibit 5.

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).

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

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

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

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

1. Purpose

The Exchange proposes to amend BZX Rule 11.23, Auctions, to modify how the BZX Official Closing Price,⁵ which is the price disseminated to the consolidated tape as the market center closing trade, would be determined for any BZX-listed security that is not a corporate security (i.e., an Exchange-Traded Product ("ETP") as provided in Exchange Rule 14.11, also referred to as a "Derivative Securities Product"), as set forth in Rule 11.23(c)(2)(B)(ii)(b). The proposal is substantively identical to the process described in Nasdaq Stock Market LLC ("Nasdaq") Rule 4754(b)(4)(A)(ii)⁶ and substantially similar to the process described in NYSE Arca, Inc. ("Arca") Rule 1.11(II).⁷ Further, this provision of Rule 11.23(c)(2)(B)(ii)(b) is only used to determine the BZX Official Closing Price and

⁵ See Exchange Rule 11.23(a)(3).

⁶ Infra note 14 and accompanying text.

⁷ Infra note 15 and accompanying text.

does not impact any executions in the Closing Auction. Such provision also only applies where there is less than one round lot executed in the Closing Auction and where there has not been a trade that would qualify as a Final Last Sale Eligible Trade within the final five minutes before the end of Regular Trading Hours.

Rule 11.23(c)(2)(B)(i) through (iii) sets forth how the BZX Official Closing Price for Derivative Securities Products is determined. Paragraph (B)(i) provides that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price. Paragraph (B)(ii) provides that in the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i), the BZX Official Closing Price for such security will depend on when the last consolidated last-sale trade occurs. Specifically, if a trade that would qualify as a Final Last Sale Eligible Trade⁸ occurred (a) within the final five minutes before the end of Regular Trading Hours,⁹ the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price (“TWAP”) of the National Best Bid or Offer¹⁰ (“NBBO”) midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing

⁸ 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 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. See BZX Rule 11.23(a)(9).

⁹ The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BZX Rule 1.5(w).

¹⁰ See BZX Rule 1.5(o).

Price. Paragraph (B)(iii) provides that if the BZX Official Closing Price cannot be determined under paragraphs (B)(i) or (B)(ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

The Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) in order to change how the BZX Official Closing Price is calculated using the TWAP of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours. Under current functionality, the Exchange uses all NBBO quotes during the last five minutes of Regular Trading Hours to determine the BZX Official Closing Price, which could result in setting a BZX Official Closing Price that is not necessarily reflective of a Derivative Securities Product's reasonable market value. Given this, the Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) to exclude from the TWAP calculation a midpoint that is based on an NBBO that is not reflective of the security's true and current value. As proposed, the Exchange would exclude a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price. The Exchange would also exclude a crossed NBBO from the calculation.¹¹

The proposed amendment to adopt an NBBO midpoint check is designed to validate whether an NBBO used in the calculation of the BZX Official Closing Price bears a relation to the value of the value of the Derivative Securities Product. Under the proposal, the Exchange would calculate the midpoint of the NBBO and then multiply the midpoint by ten

¹¹ As provided in Rule 11.20(a)(2), the term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

percent (10%) and compare this value to the spread of the NBBO. If the value of the midpoint when multiplied by ten percent (10%) is less than the spread of that NBBO, the Exchange would exclude the quote from the NBBO midpoint calculation. The Exchange believes that if the NBBO spread is greater than the value of the midpoint when multiplied by ten percent (10%), it would indicate that the spread is too wide, and therefore not representative of the value of the security. For example: If the NBBO is \$19.99 x \$20.01, and thus the NBBO midpoint is \$20, validation logic would allow a maximum quote width up to \$2 to be used as part of the calculation ($\$20.00 * 10\% = \2). If the NBBO was \$17.00 x \$23.00, and thus the NBBO midpoint is \$20.00, the quote would not be used in the midpoint calculation because it violates the maximum quote width ($\$20.00 * 10\% = \2). If there are no eligible quotes to determine a TWAP within the time period or if the ETP is halted, then Exchange will determine the BZX Official Closing Price as provided under existing Rule 11.23(c)(2)(B)(iii).

The Exchange plans to implement the proposed rule change during the fourth quarter of 2021, and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to provide for a BZX Official Closing Price that is more reflective of the current market value of an ETP on that trading day. Further, it will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system because it will provide for a more robust mechanism to determine the value of an ETP for purposes of determining the BZX Official Closing Price.

The proposed functionality is substantively identical to functionality that has already been approved by the Commission and is operational on another Exchange. Specifically, Nasdaq Rule 4754(b)(4)(A)(ii) provides that where a time-weighted average midpoint (“T-WAM”) calculation is reflected as the Nasdaq official closing price, the T-WAM calculation will only use an “eligible quote”, which is defined as a quote whose spread is no greater than a value of 10% of the midpoint price, and will exclude crossed NBBO markets.¹⁴ The proposal is also substantially similar to Arca Rule 1.1(II)(1)(B) except the Exchange proposes to exclude a quote when the spread is greater than a value of 10% of the midpoint price and Arca Rule 1.1(II)(1)(B) excludes a midpoint. Specifically, Arca Rule 1.1(II)(1)(B) provides that for the purpose of deriving the official closing price using a TWAP calculation, Arca will exclude 1) an NBBO midpoint from

¹⁴ See Nasdaq Rule Nasdaq Rule 4754(b)(4)(A)(ii). See also Securities and Exchange Act No. 87486 (November 7, 2019) 84 FR 61952 (November 14, 2019) (SR-NASDAQ-2019-061) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products).

the calculation if that midpoint, when multiplied by 10%, is less than the spread of that NBBO, and 2) a crossed NBBO.¹⁵ Therefore, the Exchange's proposal to exclude from the TWAP calculation provided under Rule 11.23(c)(2)(B)(ii)(b) a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price, is substantively identical to existing functionality on Nasdaq and substantially similar to existing functionality on Arca and thus does not present any new or novel issues.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

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 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 BZX Official Closing Price of BZX-listed Derivative Securities Products is calculated, pursuant to Rule 11.23(c)(2)(B)(ii)(b), at a price that is reasonably reflective of the market value of the security. The Exchange believes the proposed changes would improve the experience of market participants trading on the Exchange without imposing any significant burden on competition as the proposal would simply create a process to validate the NBBO midpoint used to determine the Official Closing Price by comparing the midpoint value to the spread of the NBBO, and if the NBBO midpoint is not within the proposed

¹⁵ See Arca Rule 1.1(11)(1)(B). See also Securities Exchange Act No. 84471 (October 23, 2018) 83 FR 54384 (October 29, 2018) (SR-NYSEArca-2018-63) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 1.1(11) To Modify the Formula for Establishing the Official Closing Price for a Derivative Securities Product When There Is No Closing Auction or if the Closing Auction Is Less Than One Round Lot, by Excluding the NBBO Midpoint if the Midpoint Multiplied by 10% Is Less Than the NBBO Spread or if the NBBO Is Crossed).

parameters, to exclude the quote from the calculation. The proposal would ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate basis for determining the Official Closing Price. Further, as the proposal is designed to ensure the BZX Official Closing Price calculated pursuant to Exchange Rule 11.23(c)(2)(B)(ii)(b) accurately reflects the supply and demand in the Derivative Securities Product, the Exchange believes the proposal will help it better compete as a listing venue.

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

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 Act¹⁶ and Rule 19b-4(f)(6)¹⁷ 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,

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-073 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-2021-073. 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-2021-073 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.¹⁸

Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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Rules of Cboe BZX Exchange, Inc.

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Rule 11.23. Auctions

(a)-(b) No change.

(c) *Closing Auction*

(1) No change.

(2) Closing Auction Process. The Exchange will conduct a Closing Auction for all BZX listed securities.

(A) No change.

(B) Determination of BZX Official Closing Price. The Closing Auction price will be established by determining the price level within the Collar Price Range that maximizes the number of shares executed between the Continuous Book and Auction Book in the Closing Auction. In the event of a volume based tie at multiple price levels, the Closing Auction price will be the price which results in the minimum total imbalance. In the event of a volume based tie and a tie in minimum total imbalance at multiple price levels, the Closing Auction price will be the price closest to the Volume Based Tie Breaker. For a BZX-listed corporate security, the Closing Auction price will be the BZX Official Closing Price. In the event that there is no Closing Auction for a BZX-listed corporate security, the BZX Official Closing Price will be the price of the Final Last Sale Eligible Trade. The BZX Official Closing Price for all other BZX-listed securities will be determined as follows:

(i) No change.

(ii) In the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i) of this Rule, the BZX Official Closing Price for such security will depend on when the last consolidated last-sale eligible trade occurs. If a trade that would qualify as a Final Last Sale Eligible Trade occurred:

(a) No change.

(b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price of the NBBO midpoint measured over the last 5 minutes before the end Regular Trading Hours will be the BZX Official Closing Price. For purposes of this paragraph (b), the Exchange will exclude a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price. A Crossed NBBO would also be excluded from the calculation; or

(iii) No change.

(C) No change.

(3) No change.

(d)-(i) No change.

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