

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 17

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

File No. \* SR 2021 - \* 076

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 checked="" type="checkbox"/> | Section 19(b)(3)(A) * <input type="checkbox"/> | Section 19(b)(3)(B) * <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 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) |

|  |  |
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| Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/> | Section 806(e)(2) * <input type="checkbox"/> |
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| Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/> |
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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> |
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| Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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**Description**

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

The Exchange proposes to amend Interpretation and Policy .01 to Rule 11.13 in connection with a risk setting that Users may elect to apply to their orders in hard to borrow securities.

**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 * Matthew              | Last Name * lwamaye |
| Title * Assistant General Counsel |                     |
| E-mail * miwamaye@cboe.com        |                     |
| Telephone * (908) 489-1150        | 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 11/08/2021 | (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: 2021.11.08 08:15:41 -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 EFFS website.

**Form 19b-4 Information \***

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21-076 (Hard to Borrow List) 19b-4.do

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

21-076 (Hard to Borrow List) Exhibit 1

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 \***

Add Remove View

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

**Exhibit 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

21-076 (Hard to Borrow List) Exhibit 5.

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend Interpretation and Policy .01 to Rule 11.13 in connection with a risk setting that Users<sup>3</sup> may elect to apply to their orders in hard to borrow securities.

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

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on September 8, 2021.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Matthew Iwamaye, Assistant General Counsel, (908) 489-1150.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.13. See Rule 1.5(cc).

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

(a) Purpose

The purpose of this proposal is to amend Interpretation and Policy .01 to Rule 11.13 to allow the Exchange to offer its Users a hard to borrow risk setting (“Hard to Borrow List”) that Users may elect to apply to their short sale orders in U.S. equity securities. Pursuant to Interpretation and Policy .01 to Rule 11.13, the Exchange currently offers certain optional risk settings applicable to a User’s activities on the Exchange. Specifically, Interpretation and Policy .01(d) currently provides Users with controls to restrict the types of securities transacted, including restricted securities and easy to borrow securities, as well as restricting activity to test symbols only. When utilized, these optional risk tools act as a risk filter by evaluating a User’s orders to determine whether the orders comply with certain criteria established by the User.<sup>4</sup>

The Exchange now proposes to amend Interpretation and Policy .01(d) to Exchange Rule 11.13, to also include a Hard to Borrow List. Like the existing risk settings, the proposed rule change offers Users an optional tool to evaluate whether their orders comply with User established criteria. Specifically, orders submitted in securities included on a User’s Hard to Borrow List will be rejected back to the User.

The Hard to Borrow List resides at a User’s port level, a User-specific logical session used to access the Exchange. Users may upload a Hard to Borrow List to their preferred port(s) via a web-based application programming interface. When uploaded to

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<sup>4</sup> See Securities Exchange Act Release No. 60236 (July 2, 2009) 74 FR 34068 (July 14, 2009) (SR-BATS-2009-019) (notice of filing and immediate effectiveness of proposed rule change to establish a Sponsored Access Risk Management Tool). See also Securities Exchange Act Release No. 34-68330 (November 30, 2012) 77 FR 72894 (December 6, 2012) (SR-BATS-2012-045).

the port, Users may apply the setting to some or all of the market-participant identifiers (MPID) that they use to access the Exchange via the specified port. As is the case with the Exchange's existing risk settings, the User, and not the Exchange, will have the full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations, and may not rely on the Hard to Borrow List for any such purpose.<sup>5</sup>

Furthermore, use of the Hard to Borrow List does not automatically constitute compliance with Exchange Rules. As is the case with the Exchange's existing risk settings, the Exchange does not believe that the use of the Hard to Borrow List can replace User-managed risk management solutions.

The Exchange proposes to make the risk setting available to its Users upon request and will not require Users to utilize the Hard to Borrow List. The Exchange will not provide preferential treatment to Users using the Hard to Borrow List. However, the Exchange believes the Hard to Borrow List will offer Exchange Users another option in efficient risk management of its access to the Exchange. For instance, the Hard to Borrow List may assist some Users in managing borrowing costs for their short sale transactions. Generally, day over day borrowing costs in hard to borrow securities may be costly, and while a locate may be secured by a User prior to routing their short sale transactions to the Exchange, borrowing costs may make such transactions less desirable. By utilizing the Hard to Borrow List, Users have a tool that enables them to manage their costs by rejecting orders in such securities.

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<sup>5</sup> *See* Securities and Exchange Commission Release No. 34-50103 (July 28 2004) 69 FR 48007 (August 6, 2004) (Final Rule: Short Sales) at 48014, regarding hard to borrow lists and the locate requirements under 17 CFR § 242.203 (Regulation SHO Rule 203 – Borrowing and delivery requirements).

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> 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, 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.

Specifically, the Exchange believes that the proposed rule change is consistent with these principles because, like the current risk settings, the Hard to Borrow List fosters competition by providing another option in the efficient risk management of trading on the Exchange. Users are free to use the Exchange's Hard to Borrow List, or other risk management offerings.

Moreover, as noted by the Commission, even when shares can be borrowed short sellers may find it costly to borrow stock to enter or maintain a short position.<sup>8</sup> In this regard, the Hard to Borrow List provides Users with a tool to help manage such costs by rejecting orders in hard to borrow securities and thus providing a mechanism of financial protection to Exchange Users.

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<sup>6</sup> 15 U.S.C. § 78f(b).

<sup>7</sup> 15 U.S.C. § 78f(b)(5).

<sup>8</sup> *See* Staff of the U.S. Securities and Exchange Commission, *Staff Report on Equity And Options Market Structure Conditions in Early 2021*, (October 14, 2021) at 30, footnote 84

The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>9</sup> in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market, and provides an opportunity for investors' orders to be executed without the participation of a dealer. Additionally, the rule proposal is consistent with Section 11(a)(1)<sup>10</sup> in that makes the Hard to Borrow List available to all Users, regardless of their size.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is not designed to address any competitive issues and does not pose an undue burden on Users, as the Hard to Borrow List is an optional risk setting offered to all Users.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposal. No written comments were solicited or received on the proposed rule change.

6. Extension of Time Period for Commission Action

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<sup>9</sup> 15 U.S.C. § 78k-1(a)(1)

<sup>10</sup> *Id.*

The Exchange does not consent to an extension of the time period for Securities and Exchange Commission (the “Commission”) action on the proposed rule change specified in Section 19(b)(2) of the Act.<sup>11</sup>

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

The proposed rule change is filed for accelerated effectiveness pursuant to Section 19(b)(2) of the Act.<sup>12</sup> The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Act so that it may be operative as soon as practicable. The Exchange believes that the approval of the proposed rule change on an accelerated basis will permit the Exchange to implement the Hard to Borrow List as soon as possible.

In particular, the Exchange does not believe that this proposal raises any substantive issues not previously considered by the Commission, because the Hard to Borrow List is similar in purpose and functionality to the existing risk settings the Exchange has offered its Users for several years.<sup>13</sup> For example, the previously approved<sup>14</sup> easy to borrow risk setting will reject any incoming orders in securities that are not on a User’s easy to borrow list. Similarly, the proposed Hard to Borrow List will reject all incoming short sale orders in securities identified by the User. In this regard, like the Easy to Borrow List, the Hard to Borrow List can help Users manage their costs

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<sup>11</sup> 15 U.S.C. 78s(b)(2)

<sup>12</sup> U.S.C. 78s(b)(2)

<sup>13</sup> *Supra* note 4.

<sup>14</sup> *Id.*

by preventing short sale transactions in hard to borrow securities that may be more costly to borrow.

Furthermore, the Exchange does not believe that the proposed rule change will significantly affect the protection of investors. Rather, the proposed risk setting may provide investors with additional protections by offering an additional tool that Users may utilize to manage their financial risk associated with borrowing costs. While the Hard to Borrow List is similar in purpose and functionality to the Easy to Borrow List, the Exchange believes the proposed risk setting offers Users a useful risk tool. For instance, the number of hard to borrow securities is often fewer than those considered easy to borrow. In this regard, managing a Hard to Borrow List is less manually intensive, and minimizes the potential for human error or oversight by having to manage and upload a smaller list of securities. As such, the Hard to Borrow List can provide Users a more efficient risk management tool for short sale transactions. Additionally, the Exchange does not believe that the proposed rule change will impose any significant burden on competition because the Hard to Borrow List is an optional risk setting offered to all Users, regardless of size, that is designed to provide Users with additional flexibility in managing their risk. Additionally, Users are free to use the Exchange risk setting, or other risk management offerings.

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

The proposed rule change is not based on the rules of another self-regulatory

9. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register.

Exhibit 5 – Text of the Proposed Rule Change

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2021-076]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating to amend Interpretation and Policy .01 to Rule 11.13 in connection with a risk setting that Users may elect to apply to their orders in hard to borrow securities

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

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

Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposal to amend Interpretation and Policy .01 to Rule 11.13 in connection with a risk setting that Users<sup>3</sup> may elect to apply to their orders in hard to borrow securities. The text of the proposed rule change is provided in Exhibit 5.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> A User is any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.13. See Rule 1.5(cc).

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/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The purpose of this proposal is to amend Interpretation and Policy .01 to Rule 11.13 to allow the Exchange to offer its Users a hard to borrow risk setting ("Hard to Borrow List") that Users may elect to apply to their short sale orders in U.S. equity securities. Pursuant to Interpretation and Policy .01 to Rule 11.13, the Exchange currently offers certain optional risk settings applicable to a User's activities on the Exchange. Specifically, Interpretation and Policy .01(d) currently provides Users with controls to restrict the types of securities transacted, including restricted securities and easy to borrow securities, as well as restricting activity to test symbols only. When utilized, these optional risk tools act as a risk filter by evaluating a User's orders to determine whether the orders comply with certain criteria established by the User.<sup>4</sup>

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<sup>4</sup> See Securities Exchange Act Release No. 60236 (July 2, 2009) 74 FR 34068 (July 14, 2009) (SR-BATS-2009-019) (notice of filing and immediate effectiveness of proposed

The Exchange now proposes to amend Interpretation and Policy .01(d) to Exchange Rule 11.13, to also include a Hard to Borrow List. Like the existing risk settings, the proposed rule change offers Users an optional tool to evaluate whether their orders comply with User established criteria. Specifically, orders submitted in securities included on a User's Hard to Borrow List will be rejected back to the User.

The Hard to Borrow List resides at a User's port level, a User-specific logical session used to access the Exchange. Users may upload a Hard to Borrow List to their preferred port(s) via a web-based application programming interface. When uploaded to the port, Users may apply the setting to some or all of the market-participant identifiers (MPID) that they use to access the Exchange via the specified port. As is the case with the Exchange's existing risk settings, the User, and not the Exchange, will have the full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations, and may not rely on the Hard to Borrow List for any such purpose.<sup>5</sup> Furthermore, use of the Hard to Borrow List does not automatically constitute compliance with Exchange Rules. As is the case with the Exchange's existing risk settings, the Exchange does not believe that the use of the Hard to Borrow List can replace User-managed risk management solutions.

The Exchange proposes to make the risk setting available to its Users upon request and will not require Users to utilize the Hard to Borrow List. The Exchange will

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rule change to establish a Sponsored Access Risk Management Tool). *See also* Securities Exchange Act Release No. 34-68330 (November 30, 2012) 77 FR 72894 (December 6, 2012 (SR-BATS-2012-045)).

<sup>5</sup> *See* Securities and Exchange Commission Release No. 34-50103 (July 28 2004) 69 FR 48007 (August 6, 2004) (Final Rule: Short Sales) at 48014, regarding hard to borrow lists and the locate requirements under 17 CFR § 242.203 (Regulation SHO Rule 203 – Borrowing and delivery requirements).

not provide preferential treatment to Users using the Hard to Borrow List. However, the Exchange believes the Hard to Borrow List will offer Exchange Users another option in efficient risk management of its access to the Exchange. For instance, the Hard to Borrow List may assist some Users in managing borrowing costs for their short sale transactions. Generally, day over day borrowing costs in hard to borrow securities may be costly, and while a locate may be secured by a User prior to routing their short sale transactions to the Exchange, borrowing costs may make such transactions less desirable. By utilizing the Hard to Borrow List, Users have a tool that enables them to manage their costs by rejecting orders in such securities.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,<sup>6</sup> in general, and Section 6(b)(5) of the Act,<sup>7</sup> 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, 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.

Specifically, the Exchange believes that the proposed rule change is consistent with these principles because, like the current risk settings, the Hard to Borrow List fosters competition by providing another option in the efficient risk management of trading on the Exchange. Users are free to use the Exchange's Hard to Borrow List, or other risk management offerings.

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<sup>6</sup> 15 U.S.C. § 78f(b).

<sup>7</sup> 15 U.S.C. § 78f(b)(5).

Moreover, as noted by the Commission, even when shares can be borrowed short sellers may find it costly to borrow stock to enter or maintain a short position.<sup>8</sup> In this regard, the Hard to Borrow List provides Users with a tool to help manage such costs by rejecting orders in hard to borrow securities and thus providing a mechanism of financial protection to Exchange Users.

The proposed rule change also is designed to support the principles of Section 11A(a)(1)<sup>9</sup> in that it seeks to assure economically efficient execution of securities transactions, makes it practicable for brokers to execute investors' orders in the best market, and provides an opportunity for investors' orders to be executed without the participation of a dealer. Additionally, the rule proposal is consistent with Section 11(a)(1)<sup>10</sup> in that makes the Hard to Borrow List available to all Users, regardless of their size.

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

The Exchange does not believe that the proposed rule change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed rule change is not designed to address any competitive issues and does not pose an undue burden on Users, as the Hard to Borrow List is an optional risk setting offered to all Users.

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<sup>8</sup> *See* Staff of the U.S. Securities and Exchange Commission, *Staff Report on Equity And Options Market Structure Conditions in Early 2021*, (October 14, 2021) at 30, footnote 84

<sup>9</sup> 15 U.S.C. § 78k-1(a)(1)

<sup>10</sup> *Id.*

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposal. No written comments were solicited or received on the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- A. by order approve or disapprove such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-076 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-2021-076. 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-2021-076 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.<sup>11</sup>

Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).

EXHIBIT 5

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

**Rules of Cboe BZX Exchange, Inc.**

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## Rule 11.13. Order Execution and Routing

(a) – (e) (No changes.)

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*Interpretations and Policies:*

.01 The Exchange offers certain risk settings applicable to a User's activities on the Exchange. The risk settings currently offered by the Exchange include:

(a)-(c) (No changes.)

(d) controls to restrict the types of securities transacted (including restricted securities, [and] easy to borrow securities, and hard to borrow securities, as well as restricting activity to test symbols only);

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