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

File No. * SR 2022 - * 053

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"/>
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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) *

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

Section 3C(b)(2) *

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Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

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

The Exchange proposes to amend Rule 11.9(f) to permit affiliated Users to enable Match Trade Prevention.

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 *	Courtney	Last Name *	Smith
Title *	Counsel		
E-mail *	csmith@cboe.com		
Telephone *	(913) 815-7046	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 10/27/2022

(Title *)

By Kyle Murray

(Name *)

VP, Associate General Counsel

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: 2022.10.27
11:51:58 -05'00'

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 *

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BZX-22-053 19b-4 (MTP Update).doc

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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BZX-22-053 Exhibit 1 (MTP Update).c

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

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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.

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Exhibit Sent As Paper Document

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

BZX-22-053 Exhibit 5 (MTP Update).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

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

Item 1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend Exchange Rule 11.9(f) (“Match Trade Prevention (“MTP”) Modifiers”) to permit affiliated Users to enable Match Trade Prevention at the parent company level. The Exchange has designated this proposal as non-controversial pursuant to Rule 19b-4(f)(6)(iii) under the Act.³

The text of the proposed rule change is provided in 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.

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 5, 2022.

(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 Courtney Smith, (913) 815-7046, Cboe BZX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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 Rule 11.9(f) (“Match Trade Prevention (“MTP”) Modifiers”) to add the term “affiliate identifier” to the definition of “Unique Identifier” while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for MTP functionality on the Exchange would allow affiliated Users⁴ to enable MTP at the affiliate level, in addition to the current MTP functionality based on market participant identifier (“MPID”), Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier (any such existing identifier, a “Unique Identifier”).⁵ Currently, the Exchange’s MTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.⁶ MTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

⁴ See Exchange Rule 1.5(cc). “User” is defined as “[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.” The “System” is “[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.” See Exchange Rule 1.5(aa). The term “Member” means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

⁵ See Exchange Rule 11.9(f).

⁶ Id.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID⁷; (ii) Exchange Member identifier; (iii) trading group identifier; and (iv) Exchange Sponsored Participant identifier.⁸ MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side

⁷ An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

⁸ See Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) SR-BATS-2009-022 (“Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled “Orders and Modifiers””), in which the Exchange adopted Member Match Trade Prevention (now known as MTP) and designated MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier as Unique Identifiers. See also Securities Exchange Act Release No. 67093 (June 1, 2012), 77 FR 33798 (June 7, 2012) SR-BATS-2012-018 (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality”), which amended the definition of Unique Identifier to include trading group identifier.

orders with an identical Sponsored Participant identifier. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a fifth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for use of the affiliate identifier will be determined.⁹ The proposed addition of the affiliate identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.¹⁰ As applied to the Exchange, there are situations where two separate entities (i.e., Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (i.e., Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the

Commented [SC1]: Add a sentence or two about also adding the definition of "affiliate" to the rule text.

⁹ Infra note 13.

¹⁰ See 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

various securities laws relating to potentially manipulative trading activity such as wash sales¹¹ and self-trades.¹² Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships or Sponsored Participant relationships to utilize MTP where one User is an affiliate of another User.¹³ Specifically, the Exchange is proposing to allow affiliated Users to use MTP functionality in order to prevent executions from occurring between those individual Users. When a User requests MTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra

¹¹ A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

¹² Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

¹³ The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend MTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which MTP functionality may be useful.

To demonstrate how MTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which MTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of “A” when requesting MTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of “C”.

Affiliate Level MTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled MTP. Firm A’s buy order is prevented from executing with Firm B’s sell order as each firm has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A’s buy order will be permitted to execute with Firm C’s sell order because Firm C has not enabled MTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled MTP. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A’s order will be eligible to trade with both Firm B and Firm C. Firm A’s order is eligible to trade with Firm B because Firm B did

not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

The Exchange plans to implement the proposed rule change during the fourth quarter of 2022 or first quarter of 2023, and will announce the implementation date via Trade Desk Notice.

(b) Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁴ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁵ requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level MTP functionality promotes just and equitable principles of trade by allowing Users to better

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ Id.

manage order flow and prevent undesirable trading activity such as wash sales”¹⁷ or self-trades¹⁸ that may occur as a result of the velocity of trading in today’s high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange’s MTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, trading group, and Sponsored Participant levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.¹⁹ For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire MTP functionality on an affiliate level that will help them achieve compliance²⁰ with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing

¹⁷ Supra note 4.

¹⁸ Supra note 5.

¹⁹ The Exchange notes that the proposed rule filing is similar in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of “beneficial ownership”, and whether separate accounts have common ownership. For example, the CME Group (“CME”), an operator of global derivatives markets, recognizes that “buy and sell orders for different accounts with common beneficial ownership...shall also be deemed to violate the prohibition on wash trades.” See CME Rule 534. See also <https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf>, FAQ Q2, which describes “common beneficial ownership” as accounts with common beneficial ownership that is less than 100%.

²⁰ The Exchange reminds Users that while they may utilize MTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

Unique Identifier level. In this regard, the proposed affiliate level MTP functionality will permit Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize MTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (e.g., voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

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 of the Act. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the affiliate identifier and is available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

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

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.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 Act²² and Rule 19b-4(f)(6)²³ 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

²¹ 15 U.S.C. 78s(b)(2).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

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 addition of the proposed affiliate identifier will not change how existing MTP functionality on the Exchange operates. Users who currently choose to enable MTP using one of the existing Unique Identifiers in Rule 11.9(f) will continue to be able to prevent the matching and execution of contra side orders in order to better manage order flow and assist with preventing undesirable executions such as wash sales and self-trades. The addition of the proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier will extend MTP functionality to Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship in order to prevent the execution of transactions by and between the affiliated Users. MTP will continue to be an optional functionality offered by the Exchange and Users will not be required to enable MTP when submitting orders to the Exchange.

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. Waiver of the

operative delay will permit the proposed changes to Rule 11.9(f) to become effective immediately, which is consistent with the protection of investors and the public interest because the proposed change does not change how current MTP functionality on the Exchange works. Rather than being limited to individual Users on the Exchange, affiliated Users will also be permitted to enable MTP functionality in order to better manage order flow and assist with preventing undesirable executions such as wash sales and self-trades in the same manner as individual Users who currently enable MTP at either the MPID, Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier levels. The proposed change does not introduce any novel regulatory issues for the Commission to consider, as this proposed change is limited to a technological change that would permit MTP functionality to be enabled by Users who each maintain individual Exchange memberships or Sponsored Participant relationships but have an affiliate relationship with a different User.

(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.

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 2-4. Not applicable.
- Exhibit 5. Proposed rule text.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34- ; File No. SR-CboeBZX-2022-053]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9(f) to Permit Affiliated Users to Enable Match Trade Prevention

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”) proposes to amend Exchange Rule 11.9(f) (“Match Trade Prevention (“MTP”) Modifiers”) to permit affiliated Users to enable Match Trade Prevention at the parent company level. 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 Rule 11.9(f) ("Match Trade Prevention ("MTP") Modifiers") to add the term "affiliate identifier" to the definition of "Unique Identifier" while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for MTP functionality on the Exchange would allow affiliated Users⁵ to enable MTP at the affiliate level, in addition to the current MTP functionality based on market participant identifier ("MPID"), Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier (any

⁵ See Exchange Rule 1.5(cc). "User" is defined as "[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3." The "System" is "[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away." See Exchange Rule 1.5(aa). The term "Member" means any registered broker or dealer that has been admitted to membership in the Exchange. See Exchange Rule 1.5(n).

such existing identifier, a “Unique Identifier”).⁶ Currently, the Exchange’s MTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.⁷ MTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID⁸; (ii) Exchange Member identifier; (iii) trading group identifier; and (iv) Exchange Sponsored Participant identifier.⁹ MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables MTP functionality using the MPID Unique Identifier will

⁶ See Exchange Rule 11.9(f).

⁷ Id.

⁸ An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

⁹ See Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) SR-BATS-2009-022 (“Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled “Orders and Modifiers””), in which the Exchange adopted Member Match Trade Prevention (now known as MTP) and designated MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier as Unique Identifiers. See also Securities Exchange Act Release No. 67093 (June 1, 2012), 77 FR 33798 (June 7, 2012) SR-BATS-2012-018 (“Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality”), which amended the definition of Unique Identifier to include trading group identifier.

prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a fifth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for use of the affiliate identifier will be determined.¹⁰ The proposed addition of the affiliate identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept

Commented [SC1]: Add a sentence or two about also adding the definition of "affiliate" to the rule text.

¹⁰ Infra note 14.

of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.¹¹ As applied to the Exchange, there are situations where two separate entities (i.e., Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (i.e., Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales¹² and self-trades.¹³ Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

¹¹ See 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

¹² A "wash sale" is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. See, e.g., 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) ("Other Trading Practices").

¹³ Self-trades are "transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security." FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. See FINRA Rule 5210, Supplementary Material .02.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships or Sponsored Participant relationships to utilize MTP where one User is an affiliate of another User.¹⁴ Specifically, the Exchange is proposing to allow affiliated Users to use MTP functionality in order to prevent executions from occurring between those individual Users. When a User requests MTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend MTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which MTP functionality may be useful.

To demonstrate how MTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which MTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of “A” when requesting MTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of “C”.

Affiliate Level MTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate

¹⁴ The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User’s Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled MTP. Firm A's buy order is prevented from executing with Firm B's sell order as each firm has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order will be permitted to execute with Firm C's sell order because Firm C has not enabled MTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled MTP. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled MTP at the affiliate level using an

affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

The Exchange plans to implement the proposed rule change during the fourth quarter of 2022 or first quarter of 2023, and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ requirements that the rules of an exchange be 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level MTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales¹⁸ or self-trades¹⁹ that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's MTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, trading group, and Sponsored Participant levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.²⁰ For instance, the Users may share traders or

¹⁷ Id.

¹⁸ Supra note 5.

¹⁹ Supra note 6.

²⁰ The Exchange notes that the proposed rule filing is similar in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of "beneficial ownership", and whether separate accounts have common ownership. For example, the CME Group ("CME"), an operator of global derivatives markets, recognizes that "buy and sell orders for different accounts with common beneficial ownership...shall also be deemed to violate the prohibition on wash trades." See CME Rule 534. See also

trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire MTP functionality on an affiliate level that will help them achieve compliance²¹ with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level MTP functionality will permit Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize MTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where

<https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf>, FAQ Q2, which describes “common beneficial ownership” as accounts with common beneficial ownership that is less than 100%.

²¹ The Exchange reminds Users that while they may utilize MTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

one User indirectly or directly controls the other User (e.g., voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

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. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the affiliate identifier and is available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

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 Act²² and Rule 19b-4(f)(6)²³ 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

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2022-053 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-2022-053. 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-2022-053 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.²⁴

Secretary

²⁴ 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 11.9. Orders and Modifiers

Users may enter into the System the types of orders listed in this Rule 11.9, subject to the limitations set forth in this Rule or elsewhere in these Rules.

(a) – (e) No change.

(f) *Match Trade Prevention (“MTP”) Modifiers.* Any incoming order designated with an MTP modifier will be prevented from executing against a resting opposite side order also designated with an MTP modifier and originating from the same market participant identifier (“MPID”), Exchange Member identifiers, trading group identifier, [or] Exchange Sponsored Participant identifier, or affiliate identifier (any such identifier, a “Unique Identifier”). The affiliate identifier is available to Users that demonstrate affiliation by: (i) greater than 50% ownership identified on a User’s Form BD; and (ii) execution of an affidavit stating that a control relationship exists between Users. Subject to the exception contained in paragraph (3) below, the MTP modifier on the incoming order controls the interaction between two orders marked with MTP modifiers.

(1) – (5) No change.

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