

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 34		SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4		File No. * SR 2024 - * 011 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"/>	
Pilot <input type="checkbox"/>		Extension of Time Period for Commission Action * <input type="checkbox"/>		Date Expires * <input type="text"/>	
		Rule			
		<input type="checkbox"/> 19b-4(f)(1)		<input type="checkbox"/> 19b-4(f)(4)	
		<input checked="" type="checkbox"/> 19b-4(f)(2)		<input type="checkbox"/> 19b-4(f)(5)	
		<input type="checkbox"/> 19b-4(f)(3)		<input type="checkbox"/> 19b-4(f)(6)	
Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010 Section 806(e)(1) * <input type="checkbox"/>			Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>		
Exhibit 2 Sent As Paper Document <input type="checkbox"/>			Exhibit 3 Sent As Paper Document <input type="checkbox"/>		
Description Provide a brief description of the action (limit 250 characters, required when Initial is checked *). <div>The Exchange proposes to amend its Fee Schedule.</div>					
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 duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized. Date 02/01/2024 (Title *) By Kyle Murray VP, Associate General Counsel (Name *) <div>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.</div> <div>Kyle Murray Date: 2024.02.01 08:47:36 -06'00'</div>					

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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-24-011 19b-4 (BZX Fees - Febru

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-24-011 Exhibit 1 (February Fees)

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

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

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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.

☐

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

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BZX-24-011 Exhibit 5 (February fees).

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) Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

Item 2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on January 31, 2024.

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

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

(a) Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (“BZX Equities”) by 1) modifying the rate associated with fee code RP; 2) modifying the criteria of Add Volume Tier 3; and 3) removing certain tiers from the Fee Schedule. The Exchange proposes to implement these changes effective February 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a

number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the “Act”), to which market participants may direct their order flow. Based on publicly available information,¹ no single registered equities exchange has more than 14% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.² For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.³ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

¹ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 23, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

² See BZX Equities Fee Schedule, Standard Rates.

³ Id.

Fee Code RP

The Exchange currently offers fee code RP, which is appended to non-displayed orders that add liquidity to the Exchange using a Supplemental Peg Order.⁴ Currently, orders appended with fee code RP are provided a rebate of \$0.00170 per share in securities priced at or above \$1.00. For securities appended with fee code RP priced below \$1.00 the Exchange does not provide a rebate or assess a fee. Now the Exchange proposes to lower the rebate amount associated with fee code RP from \$0.00170 per share to \$0.00080 per share in securities priced at or above \$1.00. The Exchange does not propose to change its pricing for orders appended with fee code RP in securities priced below \$1.00. The Exchange notes that this change is being made in order to align the rebate associated with fee code RP with other fee codes on the Exchange that provide a rebate for non-displayed orders.⁵

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange offers various Add/Remove Volume Tiers. In particular, the Exchange offers eight Add Volume Tiers that provide enhanced rebates for orders yielding fee codes B,⁶ V⁷ and Y⁸ where a Member reaches

⁴ See Rule 11.9(c)(18). A “Supplemental Peg Order” is a non-displayed limit order that posts to the BZX Book and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.

⁵ See e.g., BZX Equities Fee Schedule, Fee Codes HB, HV, and HY. Each of the aforementioned fee codes provides a rebate of \$0.00080 per share in securities priced at or above \$1.00 for non-displayed orders that add liquidity in Tapes B, A, and C securities, respectively.

⁶ Fee code B is appended to displayed orders that add liquidity to BZX in Tape B securities.

⁷ Fee code V is appended to displayed orders that add liquidity to BZX in Tape A securities.

⁸ Fee code Y is appended to displayed orders that add liquidity to BZX in Tape C securities.

certain add volume-based criteria. First, the Exchange proposes to modify the criteria of Add Volume Tier 3. The current criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV⁹ as a percentage of TCV¹⁰ $\geq 0.25\%$ or Member has an ADAV $\geq 25,000,000$.

The proposed criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV $\geq 0.30\%$ or Member has an ADAV $\geq 30,000,000$.

The proposed modification to Add Volume Tier 3 represents a modest increase in difficulty to achieve the applicable tier threshold while maintaining the existing rebate.

The Exchange believes that the proposed criteria continues to be commensurate with the rebate received and will encourage Members to grow their volume on the Exchange.

Increased volume on the Exchange contributes to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

In addition to the proposed modification to Add Volume Tier 3, the Exchange now proposes to delete Add Volume Tier 8 as the Exchange does not wish to, nor is

⁹ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹⁰ “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

Additionally, under footnote 1, the Exchange offers five Non-Displayed Add Volume Tiers which provide enhanced rebates for orders yielding fee codes HB,¹¹ HV,¹² or HY¹³ where a Member reaches certain add volume-based criteria. The Exchange now proposes to delete Non-Displayed Add Volume Tier 6 as the Exchange does not wish to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

(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

¹¹ Fee code HB is appended to non-displayed orders that add liquidity to BZX in Tape B securities.

¹² Fee code HV is appended to non-displayed orders that add liquidity to BZX in Tape A securities.

¹³ Fee code HY is appended to non-displayed orders that add liquidity to BZX in Tape C securities.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 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)¹⁶ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹⁷ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify Add Volume Tier 3 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,¹⁸ including the Exchange,¹⁹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates

¹⁶ Id.

¹⁷ 15 U.S.C. 78f(b)(4)

¹⁸ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

¹⁹ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

In particular, the Exchange believes its proposal to modify Add Volume Tier 3 is reasonable because the revised tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes the proposed modification to Add Volume Tier 3 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes to Add Volume Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. Further, the Exchange believes its proposed change to fee code RP is reasonable as this change does not represent a significant departure from the Exchange's general pricing structure. The Exchange notes that the proposed change to fee code RP are intended to align the rebate associated with Supplemental Peg Orders with existing rebates offered by the Exchange for other non-displayed orders adding liquidity to the Exchange.²⁰ The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all

²⁰ Supra note 5.

Members continue to be eligible for the proposed Add Volume Tier 3 and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for proposed Add Volume Tier 3. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 3. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes that its proposal to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 is reasonable because the Exchange is not required to maintain these tiers nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate the tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate the tiers enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed modification to Add Volume Tier 3 and the proposed lower rebate associated with fee code RP will apply to all Members equally in that all Members are eligible for the modified tier and lower rebate, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of BZX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing

market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Additionally, the Exchange believes the proposed elimination of Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the proposed change to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.²¹ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets.

²¹ Supra note 1.

Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²² The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²³ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

Item 6. Extension of Time Period for Commission Action

Not applicable.

²² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²³ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

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

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(2)²⁵ thereunder.

(b) The Exchange designates that the proposed rule change establishes or changes a due, fee, or other charge imposed by the Exchange, which renders the proposed rule change effective upon filing with the Securities and Exchange Commission (the “Commission”). At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

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

The proposed rule change is not based on a rule either of another self-regulatory organization or of the Commission.

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

Not applicable.

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(2).

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

Not applicable.

Item 11. Exhibits

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

Exhibits 2-4. Not applicable.

Exhibit 5. Proposed rule text.

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2024-011]

[Insert date]

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

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

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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform ("BZX Equities") by 1) modifying the rate associated with fee code RP; 2) modifying the criteria of Add Volume Tier 3; and 3) removing certain tiers from the Fee Schedule. The Exchange proposes to implement these changes effective February 1, 2024.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the "Act"), to which market participants may direct their order flow. Based on publicly available information,³ no single registered equities exchange has more than 14% of the

³ See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (January 23, 2024), available at https://www.cboe.com/us/equities/market_statistics/.

market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a “Maker-Taker” model whereby it pays rebates to members that add liquidity and assesses fees to those that remove liquidity. The Exchange’s Fee Schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above \$1.00, the Exchange provides a standard rebate of \$0.00160 per share for orders that add liquidity and assesses a fee of \$0.0030 per share for orders that remove liquidity.⁴ For orders in securities priced below \$1.00, the Exchange provides a standard rebate of \$0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of the total dollar value for orders that remove liquidity.⁵ Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Fee Code RP

The Exchange currently offers fee code RP, which is appended to non-displayed orders that add liquidity to the Exchange using a Supplemental Peg Order.⁶ Currently,

⁴ See BZX Equities Fee Schedule, Standard Rates.

⁵ Id.

⁶ See Rule 11.9(c)(18). A “Supplemental Peg Order” is a non-displayed limit order that posts to the BZX Book and thereafter is eligible for execution at the NBB for buy orders and NBO for sell orders against routable orders that are equal to or less than the aggregate size of the Supplemental Peg Order interest available at that price.

orders appended with fee code RP are provided a rebate of \$0.00170 per share in securities priced at or above \$1.00. For securities appended with fee code RP priced below \$1.00 the Exchange does not provide a rebate or assess a fee. Now the Exchange proposes to lower the rebate amount associated with fee code RP from \$0.00170 per share to \$0.00080 per share in securities priced at or above \$1.00. The Exchange does not propose to change its pricing for orders appended with fee code RP in securities priced below \$1.00. The Exchange notes that this change is being made in order to align the rebate associated with fee code RP with other fee codes on the Exchange that provide a rebate for non-displayed orders.⁷

Add/Remove Volume Tiers

Under footnote 1 of the Fee Schedule, the Exchange offers various Add/Remove Volume Tiers. In particular, the Exchange offers eight Add Volume Tiers that provide enhanced rebates for orders yielding fee codes B,⁸ V⁹ and Y¹⁰ where a Member reaches certain add volume-based criteria. First, the Exchange proposes to modify the criteria of Add Volume Tier 3. The current criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or

⁷ See e.g., BZX Equities Fee Schedule, Fee Codes HB, HV, and HY. Each of the aforementioned fee codes provides a rebate of \$0.00080 per share in securities priced at or above \$1.00 for non-displayed orders that add liquidity in Tapes B, A, and C securities, respectively.

⁸ Fee code B is appended to displayed orders that add liquidity to BZX in Tape B securities.

⁹ Fee code V is appended to displayed orders that add liquidity to BZX in Tape A securities.

¹⁰ Fee code Y is appended to displayed orders that add liquidity to BZX in Tape C securities.

Y) where a Member has an ADAV¹¹ as a percentage of TCV¹² $\geq 0.25\%$ or
Member has an ADAV $\geq 25,000,000$.

The proposed criteria for Add Volume Tier 3 is as follows:

- Add Volume Tier 3 provides a rebate of \$0.0027 per share in securities priced at or above \$1.00 to qualifying orders (i.e., orders yielding fee codes B, V, or Y) where a Member has an ADAV as a percentage of TCV $\geq 0.30\%$ or Member has an ADAV $\geq 30,000,000$.

The proposed modification to Add Volume Tier 3 represents a modest increase in difficulty to achieve the applicable tier threshold while maintaining the existing rebate. The Exchange believes that the proposed criteria continues to be commensurate with the rebate received and will encourage Members to grow their volume on the Exchange. Increased volume on the Exchange contributes to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

In addition to the proposed modification to Add Volume Tier 3, the Exchange now proposes to delete Add Volume Tier 8 as the Exchange does not wish to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

¹¹ “ADAV” means average daily added volume calculated as the number of shares added per day. ADAV is calculated on a monthly basis.

¹² “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

Additionally, under footnote 1, the Exchange offers five Non-Displayed Add Volume Tiers which provide enhanced rebates for orders yielding fee codes HB,¹³ HV,¹⁴ or HY¹⁵ where a Member reaches certain add volume-based criteria. The Exchange now proposes to delete Non-Displayed Add Volume Tier 6 as the Exchange does not wish to, nor is required to, maintain such tier. More specifically, the proposed change removes this tier as the Exchange would rather redirect future resources and funding into other programs and tiers intended to incentivize increased order flow.

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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁷ 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)¹⁸ requirement that the rules of

¹³ Fee code HB is appended to non-displayed orders that add liquidity to BZX in Tape B securities.

¹⁴ Fee code HV is appended to non-displayed orders that add liquidity to BZX in Tape A securities.

¹⁵ Fee code HY is appended to non-displayed orders that add liquidity to BZX in Tape C securities.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ Id.

an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as Section 6(b)(4)¹⁹ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to modify Add Volume Tier 3 reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,²⁰ including the Exchange,²¹ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules or rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

¹⁹ 15 U.S.C. 78f(b)(4)

²⁰ See e.g., EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

²¹ See e.g., BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

In particular, the Exchange believes its proposal to modify Add Volume Tier 3 is reasonable because the revised tier will be available to all Members and provide all Members with an opportunity to receive an enhanced rebate. The Exchange further believes the proposed modification to Add Volume Tier 3 will provide a reasonable means to encourage liquidity adding displayed orders in Members' order flow to the Exchange and to incentivize Members to continue to provide liquidity adding volume to the Exchange by offering them an opportunity to receive an enhanced rebate on qualifying orders. An overall increase in activity would deepen the Exchange's liquidity pool, offer additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange believes that the proposed changes to Add Volume Tier 3 are reasonable as they do not represent a significant departure from the criteria currently offered in the Fee Schedule. Further, the Exchange believes its proposed change to fee code RP is reasonable as this change does not represent a significant departure from the Exchange's general pricing structure. The Exchange notes that the proposed change to fee code RP are intended to align the rebate associated with Supplemental Peg Orders with existing rebates offered by the Exchange for other non-displayed orders adding liquidity to the Exchange.²² The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members continue to be eligible for the proposed Add Volume Tier 3 and have the opportunity to meet the tier's criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange

²² Supra note 7.

venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for proposed Add Volume Tier 3. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on the prior month's volume, the Exchange anticipates that at least one Member will be able to satisfy proposed Add Volume Tier 3. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes that its proposal to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 is reasonable because the Exchange is not required to maintain these tiers nor is it required to provide Members an opportunity to receive enhanced rebates. The Exchange believes its proposal to eliminate the tiers is also equitable and not unfairly discriminatory because it applies to all Members (i.e., the tiers will not be available for any Member). The Exchange also notes that the proposed rule change to remove these tiers merely results in Members not receiving an enhanced rebate, which, as noted above, the Exchange is not required to offer or maintain. Furthermore, the proposed rule change to eliminate the tiers enables the Exchange to redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

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. Rather, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional order flow to a public exchange, thereby

promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed modification to Add Volume Tier 3 and the proposed lower rebate associated with fee code RP will apply to all Members equally in that all Members are eligible for the modified tier and lower rebate, have a reasonable opportunity to meet the proposed tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. The Exchange does not believe the proposed changes burden competition, but rather, enhance competition as they are intended to increase the competitiveness of BZX by amending existing pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Additionally, the Exchange believes the proposed elimination of Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the

purposes of the Act. Specifically, the proposed change to eliminate Add Volume Tier 8 and Non-Displayed Add Volume Tier 6 will not impose any burden on intramarket competition because the changes apply to all Members uniformly, as in, the tiers will no longer be available to any Member.

Next, the Exchange believes the proposed rule changes does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 14% of the market share.²³ Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed

²³Supra note 3.

companies.”²⁴ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁵ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁶ and paragraph (f) of Rule 19b-4²⁷ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or

²⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

²⁵ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

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

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-011 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-2024-011. This file number should be included on the subject line if email 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 (<https://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, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2024-011 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

Sherry R. Haywood,

Assistant Secretary.

²⁸

17 CFR 200.30-3(a)(12).

EXHIBIT 5

(additions are underlined; deletions are [bracketed])

* * * * *

Cboe U.S. Equities Fee Schedules**BZX Equities****Effective [January 2]February 1, 2024**

* * * * *

Fee Codes and Associated Fees:

Fee Code	Description	Fee/(Rebate)
* * * * *		
RP ⁷	Non-displayed order, adds liquidity using Supplemental Peg	(0.00[17] <u>080</u>)
* * * * *		

* * * * *

Footnotes:**1. Add/Remove Volume Tiers**

Applicable to the following fee codes: B, V and Y.

Tier	Rebate Per Share to Add	Required Criteria
* * * * *		
Tier 3	(\$0.0027)	Member has an ADAV as a percentage of TCV \geq 0.[25] <u>30</u> % or Member has an ADAV \geq [25] <u>30</u> ,000,000
* * * * *		
[Tier 8]	[(<u>\$0.0031</u>)]	[(1) Member has an ADAV as a percentage of TCV \geq 0.40%; and (2) Member adds an ADV \geq 0.05% of the TCV for Non-Displayed orders that yield fee codes HB, HI, HV or HY; and (3) Member has a Tape B ADAV \geq 0.65% of the Tape B TCV.]

Applicable to the following fee codes: HB, HV or HY.

Tier	Rebate Per Share to Add	Required Criteria
* * * * *		
[Non-Displayed Add Volume Tier 6]	[\$0.0025]	[(1) Member has an ADAV as a percentage of TCV \geq 0.40%; and (2) Member adds an ADV \geq 0.05% of the TCV for Non-Displayed orders that yield fee codes HB, HI, HV or HY; and (3) Member has a Tape B ADAV \geq 0.65% of the Tape B TCV.]

* * * * *