

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>22</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-84844; File No. SR-CboeBZX-2018-087]

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

December 18, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 3, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. 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

The Exchange is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule applicable to Members and non-Members<sup>5</sup> of the Exchange pursuant to BZX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal are effective upon filing.

<sup>22</sup> 17 CFR 200.30-3(a)(12) and (59).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

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

<sup>5</sup> A Member is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

The text of the proposed rule change is available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 its fee schedule applicable to its equities trading platform (“BZX Equities”) to increase the rebate under the Non-Displayed Add Volume Tape A Tier 1, effective December 3, 2018.

The Exchange currently provides a standard rebate of \$0.00150 per share for non-displayed orders that add liquidity. The Exchange also provides an enhanced rebate under Non-Displayed Add Volume Tape A Volume Tier, Tier 1 under Footnote 1 (“HV Volume Tier”) which is available for qualifying non-displayed orders that add liquidity (Tape A), (*i.e.*, orders which yield fee code HV). Particularly, under the HV Volume Tier, a Member may receive an enhanced rebate of \$0.00260 per share where they add an ADV<sup>6</sup> greater than or equal to 0.20% of the TCV<sup>7</sup> as Non-Displayed orders that yield fee codes HI or HV.<sup>8</sup> The Exchange

<sup>6</sup> “ADV” means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

<sup>7</sup> “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.

<sup>8</sup> Fee code HI is appended to non-displayed orders that receive price improvement and add liquidity.

proposes to increase the HV Volume Tier rebate from \$0.00260 per share to \$0.00275 per share. The Exchange believes the proposed change will encourage Members to increase non-displayed add liquidity on the exchange. The Exchange also notes that another Exchange offers the same rebate amount for similar transactions.<sup>9</sup>

###### 2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>11</sup> in particular, 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. The Exchange also 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. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange.

The Exchange believes increasing the rebate under the HV Volume Tier is reasonable because Members are provided an opportunity to receive an enhanced rebate for Non-Displayed orders that add liquidity and is a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange also notes that another Exchange offers a similar rebate.<sup>12</sup> The Exchange also believes the proposed fee change is equitable and non-discriminatory because it applies uniformly to all Members.

##### B. Self-Regulatory Organization’s Statement on Burden on Competition

<sup>9</sup> See New York Stock Exchange Price List 2018, which provides that the equity per share credit for all Midpoint Passive Liquidity (“MPL”) orders that provide liquidity, other than MPL orders from Designated Market Makers (“DMMs”), will receive a rebate of \$0.00275 per share if a Member adds an ADV greater than or equal to 0.14% Tape A NYSE consolidated average daily volume (“CADV”), excluding any liquidity added by a DMM.

<sup>10</sup> 15 U.S.C. 78f.

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> See New York Stock Exchange Price List 2018, which provides that the equity per share credit for all MPL orders that provide liquidity, other than MPL orders from DMMs, will receive a rebate of \$0.00275 per share if a Member adds an ADV greater than or equal to 0.14% Tape A CADV, excluding any liquidity added by a DMM.

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change burdens competition, but instead, enhances competition as it is intended to increase the competitiveness of BZX by modifying pricing incentives in order to attract order flow and incentivize participants to increase their participation on the Exchange. The Exchange 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 structures to be unreasonable or excessive. The proposed change is intended to enhance the rebate offered for certain non-displayed liquidity added to the Exchange, which is intended to draw additional liquidity to the Exchange. The Exchange does not believe the proposed amendment would burden intramarket competition as it would be available to all Members uniformly.

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

**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 Act<sup>13</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>14</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CboeBZX-2018-087 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 No. SR-CboeBZX-2018-087. 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 (<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, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR-CboeBZX-2018-087 and should be submitted on or before January 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-84845; File No. SR-BYX-2012-019]

**Self-Regulatory Organization; Cboe BYX Exchange, Inc.; Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program**

December 18, 2018.

On November 27, 2012, the Securities and Exchange Commission ("Commission") issued an order pursuant to its authority under Rule 612(c) of Regulation NMS ("Sub-Penny Rule")<sup>1</sup> that granted the BATS BYX-Exchange, Inc. (k/n/a "Cboe BYX" or the "Exchange") a limited exemption from the Sub-Penny Rule in connection with the operation of the Exchange's Retail Price Improvement ("RPI") Program (the "Program"). The limited exemption was granted concurrently with the Commission's approval of the Exchange's proposal to adopt the Program for a one-year pilot term.<sup>2</sup> The exemption was granted coterminous with the effectiveness of the pilot Program and has been extended six times;<sup>3</sup> both the pilot Program and

<sup>1</sup> 17 CFR 242.612(c).

<sup>2</sup> See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) ("RPI Approval Order") (SR-BXY-2012-019).

<sup>3</sup> See Securities Exchange Act Release Nos. 71249 (January 7, 2014), 79 FR 2229 (January 13, 2012) (SR-BYX-2014-001) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 71250 (January 7, 2014), 79 FR 2234 (January 13, 2012) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 74111 (January 22, 2015), 80 FR 4598 (January 28, 2015) (SR-BYX-2015-05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); and 74115 (January 22, 2015), 80 FR 4324 (January 27, 2015) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 76965 (January 22, 2016), 81 FR 4682 (January 27, 2016) (SR-BYX-2016-01) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 76953 (January 21, 2016), 81 FR 4728 (January 27, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 78180 (June 28, 2016), 81 FR 43306 (July 1, 2016) (SR-BYX-2016-15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 78178 (July 5, 2016), 81 FR 43689 (July 5, 2016) (Order Granting an Extension to Limited Exemption From Rule 612(c) of Regulation NMS in Connection With the Exchange's Retail Price Improvement Program); 81368 (August 10, 2017), 82 FR 38960 (August 16, 2017) (SR-BatsBYX-2017-18) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Pilot Period for the RPI); 81364 (August 8, 2018), 82 FR 38733

Continued

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).