

estimates that the annual hour burden of the collection of information imposed by rule 19b-1(e) would be approximately five hours per fund, at a cost of \$6,136.50.<sup>6</sup> Because the staff estimates that, each year, three funds will file an application pursuant to rule 19b-1(e), the total burden for the information collection is 15 hours at a cost of \$18,409.50.<sup>7</sup>

Commission staff estimates that there is no hour burden associated with complying with the collection of information component of rule 19b-1(c).

As noted above, Commission staff understands that funds that file an application under rule 19b-1(e) generally use outside counsel to prepare the application.<sup>8</sup> The staff estimates that, on average, outside counsel spends 10 hours preparing a rule 19b-1(e) application, including eight hours by an associate and two hours by a partner. Outside counsel billing arrangements and rates vary based on numerous factors, but the staff has estimated the average cost of outside counsel as \$400 per hour, based on information received from funds, intermediaries, and their counsel. The staff therefore estimates that the average cost of outside counsel preparation of the rule 19b-1(e) exemptive application is \$4,000.<sup>9</sup> Because the staff estimates that, each year, five funds will file an application pursuant to rule 19b-1(e), the total annual cost burden imposed by the exemptive application requirements of rule 19b-1(e) is estimated to be \$12,000.<sup>10</sup>

The Commission staff estimates that there are approximately 2,230 UITs<sup>11</sup> that may rely on rule 19b-1(c) to make capital gains distributions. The staff estimates that, on average, these UITs rely on rule 19b-1(c) once a year to make a capital gains distribution.<sup>12</sup> In

<sup>6</sup> This estimate is based on the following calculations: \$1,631 (3.5 hours × \$466 = \$1,631) plus \$40.5 (0.5 hours × \$81 = \$40.5) plus \$4,465 equals \$6,136.50 (cost of one application).

<sup>7</sup> This estimate is based on the following calculation: \$6,136.50 (cost of one application) multiplied by 3 applications = \$18,409.50 total cost.

<sup>8</sup> This understanding is based on conversations with representatives from the fund industry.

<sup>9</sup> This estimate is based on the following calculation: 10 hours multiplied by \$400 per hour equals \$4,000.

<sup>10</sup> This estimate is based on the following calculation: \$4,000 multiplied by 3 funds equals \$12,000.

<sup>11</sup> See 2019 Investment Company Fact Book, Investment Company Institute, available at [https://www.ici.org/pdf/2019\\_factbook.pdf](https://www.ici.org/pdf/2019_factbook.pdf).

<sup>12</sup> The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years and UITs. UITs may distribute capital gains biannually, annually, quarterly, or at other intervals. Additionally, a number of UITs are organized as grantor trusts, and therefore do not

most cases, the trustee of the UIT is responsible for preparing and sending the notices that must accompany a capital gains distribution under rule 19b-1(c)(2). These notices require limited preparation, the cost of which accounts for only a small, indiscrete portion of the comprehensive fee charged by the trustee for its services to the UIT. The staff believes that as a matter of good business practice, and for tax preparation reasons, UITs would collect and distribute the capital gains information required to be sent to unitholders under rule 19b-1(c) even in the absence of the rule. The staff estimates that the cost of preparing a notice for a capital gains distribution under rule 19b-1(c)(2) is approximately \$50. There is no separate cost to mail the notices because they are mailed with the capital gains distribution. Thus, the staff estimates that the capital gains distribution notice requirement imposes an annual cost on UITs of approximately \$111,500.<sup>13</sup> The staff therefore estimates that the total cost imposed by rule 19b-1 is \$123,500.<sup>14</sup>

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o Cynthia Roscoe, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: April 15, 2020.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

generally make capital gains distributions under rule 19b-1(c), or may not rely on rule 19b-1(c) as they do not meet the rule’s requirements.

<sup>13</sup> This estimate is based on the following calculation: 2,230 UITs multiplied by \$50 equals \$111,500.

<sup>14</sup> \$111,500 (total cost associated with rule 19b-1(c)) + \$12,000 (total cost associated with rule 19b-1(e)) = \$123,500.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88632; File No. SR-CboeBZX-2020-033]

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

April 14, 2020.

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 April 8, 2020, 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change 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/](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.

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

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

*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 for its equity options platform ("BZX Options").<sup>3</sup>

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 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 21% of the market share and currently the Exchange represents only 12% of the market share.<sup>4</sup> Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange's fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange assesses a standard rebate of \$0.29 per contract for Market Maker orders that add liquidity in Penny Pilot Securities and a standard rebate of \$0.40 per contract in Non-Penny Pilot Securities. Additionally, the Exchange assesses a standard fee of \$0.50 per contract for non-Customer orders that remove liquidity in Penny Pilot Securities and a standard fee of \$1.07 per contract in Non-Penny Pilot Securities. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, as discussed in further detail in the following paragraphs, 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.

Non-Customer Penny Pilot Take Volume Tiers

The Exchange currently offers three Non-Customer Penny Pilot Take Volume Tiers under footnote 3 of the Fee Schedule which provides reduced fees between \$0.44 and \$0.47 per contract for qualifying non-Customer orders which meet certain add liquidity thresholds and yield fee code PP.<sup>5</sup>

Under current Non-Customer Penny Pilot Take Volume Tier 1, a Member receives a reduced fee of \$0.44 per contract where the Member (1) has an average daily added volume ("ADAV")<sup>6</sup> in Customer orders greater than or equal to 0.80% of average options consolidated volume ("OCV"),<sup>7</sup> (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV<sup>8</sup> greater than or equal to 0.30% of average total consolidated volume ("TCV");<sup>9</sup> and (4) has an ADAV in Customer Non-Penny orders greater than or equal to 0.05% of average OCV. Now, the Exchange proposes to increase the applicable fee and modify thresholds (3) and (4) of Tier 1 listed previously. Accordingly, under the proposed thresholds for Tier 1 a Member would receive a reduced fee of \$0.45 per contract where the Member (1) has an ADAV in Customer orders greater than or equal to 0.80% of average OCV; (2) has an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV; (3) has on BZX Equities an ADAV or greater than or equal to 1.00% of average TCV; and (4) has an ADAV

<sup>5</sup> Orders yielding fee code PP are non-Customer orders that remove liquidity in Penny Pilot securities.

<sup>6</sup> ADAV means average daily added volume calculated as the number of contracts added per day.

<sup>7</sup> OCV means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

<sup>8</sup> ADAV on BZX Equities means average daily added volume calculated as the number of shares added per day.

<sup>9</sup> TCV on BZX Equities means average daily added volume calculated as the number of displayed shares added that establish a new National Best Bid and Offer ("NBBO") as a percentage of TCV [sic].

in Customer Non-Penny orders greater than or equal to 0.10% of average OCV.

Under current Non-Customer Penny Take Volume Tier 3, a Member receives a reduced fee of \$0.44 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 1.70% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.30% of average OCV. Now, the Exchange proposes to increase the fee and modify thresholds (1) and (2) associated with Tier 3. Accordingly, under the proposed thresholds for Tier 3 a Member would receive a reduced fee of \$0.45 per contract where the Member has (1) an ADAV in Customer orders equal to or greater than 2.00% of average OCV; and (2) has an ADAV in Customer Non-Penny orders equal to or greater than 0.40% of average OCV.

Although the proposed fees and thresholds under Tier 1 and 3 of the Non-Customer Penny Take Volume Tiers are higher and more stringent than the current fees for such tiers, Members will still have an opportunity to receive a reduced fee for meeting the applicable tier thresholds which are in line with similar fees for non-Customer orders in place on other options exchanges.<sup>10</sup>

Based on the above proposed changes, the Exchange also proposes to make corresponding changes to the Standard Rates table included in the Exchange's Fee Schedule.

Market-Maker Penny Pilot Add Volume Tiers

The Exchange currently offers 10 Market Maker Penny Pilot Add Volume Tiers under footnote 6 of the fee schedule which provide rebates between \$0.33 and \$0.46 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code PM.<sup>11</sup>

Under current Tier 9 of the Market Maker Penny Pilot Add Volume Tiers, a Member receives a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV; (2) has on BZX Equities an ADV of equal to or greater than 0.60% of average TCV; and (3) has a step-up ADAV in Market maker orders from December 2019 of equal to or greater than 0.05% of average OCV. Now, the Exchange proposes to modify existing thresholds (1) and (2), eliminate threshold (3), and

<sup>10</sup> See e.g., NYSE Arca imposes a fee of \$0.50 per contract for non-Customer orders that remove liquidity. Similarly, Nasdaq imposes a fee ranging from \$0.48 up to \$0.50 for non-customer orders that remove liquidity.

<sup>11</sup> Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Pilot securities.

<sup>3</sup> The Exchange initially filed the proposed fee changes on April 1, 2020 (SR-CboBZX-2020-030). On April 8, 2020, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See Cboe Global Markets U.S. Options Market Volume Summary (March 27, 2020), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

add a new threshold. Specifically, under the proposed thresholds for Tier 9, a Member would receive a rebate of \$0.44 per contract where the Member (1) has an ADAV in Market Maker orders equal to or greater than 0.50% of average OCV; (2) has an ADAV in Market Maker Non-Penny orders of equal to or greater than 0.15% of average OCV; and (3) has on BZX Equities an ADV of equal to or greater than 1.00% of average TCV.

Although the proposed changes to Tier 9 of the Market Maker Penny Pilot Add Volume Tiers is more stringent than the current tier, the Exchange believes it provides an incremental incentive proportionate to the proposed rebate. Furthermore, the proposed criteria is similar to existing criteria on the Exchange.<sup>12</sup>

In addition to the above, the Exchange proposes to modify Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers in order to clarify that the applicable average daily removed volume (“ADRV”) <sup>13</sup> criteria is applicable only to Market Maker orders.<sup>14</sup>

#### Market Maker Non-Penny Add Volume Tier

The Exchange currently offers three Market Maker Non-Penny Pilot Add Volume Tiers under footnote 7 of the fee schedule which provides enhanced rebates between \$0.45 and \$0.86 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code NM.<sup>15</sup>

Under the current Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers, a Member receives an enhanced rebate of \$0.86 per contract where the Member has (1) an ADAV in Market Maker orders greater or equal to 1.00% of average OCV and an ADAV in Market Maker non-penny orders of greater or equal to a 0.20% of average OCV. Now, the Exchange proposes to modify the rebate and threshold (2) of Tier 3. Specifically, under the proposal a Member would receive a rebate of \$0.88 per contract where the Member (1) has an ADAV in Market Maker orders greater than or equal to 1.00% of average OCV; and (2) has an ADAV in

Market Maker Non-Penny orders of greater than or equal to 0.10% of average OCV. Additionally, the Exchange proposes to make corresponding changes to the Standard Rates table included in the Exchange’s Fee Schedule.

The proposed changes to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers are designed to encourage a Market Maker’s liquidity adding volume in Non-Penny orders, and moreover to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,<sup>16</sup> in general, and furthers the requirements of Section 6(b)(4),<sup>17</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. 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 proposed rule changes reflect 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.

In particular, the Exchange believes the proposed modifications to the Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers is reasonable because it provides an additional opportunity for Members to receive a higher rebate or lower fee by providing additional criteria they can reach for. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,<sup>18</sup> including the Exchange,<sup>19</sup> 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. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.

Moreover, the Exchange believes the proposed changes are a reasonable means to encourage Members to increase their liquidity on the Exchange. The Exchange believes that the modified criteria to certain of the existing Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers may encourage Members to increase their order flow on the Exchange. Increased liquidity benefits all investors by deepening the Exchange’s liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed changes are reasonable based on the difficulty of satisfying each tier’s criteria and ensures the proposed rebate/fee and threshold appropriately reflects the incremental difficulty to achieve the applicable tier.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because it applies uniformly to either non-Customer or Market Maker orders, as applicable. Further, the Exchange provides for similar standard fees to Customer<sup>20</sup> orders for liquidity removing volume in Penny Pilot securities as compared to proposed modified Tiers 1 and 3 of the Non-Customer Penny Pilot Take Volume

provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

<sup>20</sup> See the Standard Rates table which provides that Customer orders that remove liquidity in Penny Pilot securities incur a fee of \$0.50 per contract.

<sup>12</sup> See Tier 2 [sic] of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7).

<sup>13</sup> ADRV means average daily removed volume calculated as the number of contracts removed.

<sup>14</sup> The Exchange notes it inadvertently failed to specify in the Fees Schedule that the ADRV volume was applicable to Market Maker orders only, but did address the requirement in the rule filing when Tiers 3, 6 and 8 were adopted. See Securities Exchange Act No. 85846 (May 13, 2019) 84 FR 22546 (May 17, 2019) (SR-CboeBZX-2019-038).

<sup>15</sup> Orders yielding fee code NM are Market Maker orders that add liquidity in Non-Penny Pilot securities.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4).

<sup>18</sup> See e.g., Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between \$0.01 and \$0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

<sup>19</sup> See e.g., Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny Pilot and Non-Penny Pilot Volume Tiers which

Tiers. Similarly, the Exchange offers similar tiers to Joint-Back Office,<sup>21</sup> Away Market Maker,<sup>22</sup> and Customer<sup>23</sup> orders for liquidity adding volume in both Penny Pilot and Non-Penny Pilot securities as compared to proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers.

Additionally, a number of Non-Customers have a reasonable opportunity to satisfy the proposed modified Tier 1 and Tier 3 of the Non-Customer Penny Pilot Take Volume Tiers, which the Exchange believes are more stringent than existing Tier 1 and Tier 3. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Non-Customer qualifying for the proposed modified tiers, the Exchange anticipates at least two Members to compete for and reasonably achieve each the proposed modified tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange believes the proposed tier could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

Similarly, a number of Market Makers have a reasonable opportunity to satisfy the proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers (footnote 6) and Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers (footnote 7). While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed modified tiers, the Exchange anticipates at least three Market Makers to compete for and reasonably achieve proposed modified Tier 9 of the Market Maker Penny Pilot Add Volume Tiers and at least one Market Maker to compete for and reasonably achieve proposed modified Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers; however, the proposed modified tiers are open to any Non-Customer that satisfies the applicable tier's criteria. The Exchange

believes the proposed modified tiers could provide an incentive for other Members to submit additional liquidity on the Exchange to qualify for the proposed enhanced rebate.

The Exchange also notes that the proposal will not adversely impact any Member's pricing or their ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate or reduced fee. Furthermore, the proposed enhanced rebate or reduced fee would apply to all Members that meet the required criteria under the applicable proposed tier of Non-Customer Penny Pilot Take Volume Tiers, Market Maker Penny Pilot Add Volume Tiers, and Market Maker Non-Penny Add Volume Tiers.

Lastly, the Exchange notes that the proposed changes to Tiers 3, 6, and 8 of the Market Maker Penny Pilot Add Volume Tiers is non-substantive and is merely intended to provide clarity to market participants that the ADRV criteria is applied based on Market Maker orders. As such, the Exchange believes that the proposed changes would eliminate any potential confusion.

#### *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 intramarket or intermarket 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 changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all Members. As a result, the Exchange believes that the proposed change furthers 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."<sup>24</sup>

The Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all Members equally in that all Members are eligible for the proposed modified

tiers, have a reasonable opportunity to meet each tier's criteria and will all receive the proposed reduced fee or enhanced rebate if such criteria is met. Although the proposed changes to the Non-Customer Penny Pilot Take Volume Tiers 1 and 3 and Tier 9 of the Market Maker Penny Pilot Add Volume Tiers are more stringent than the current applicable tier, the Exchange believes they provide an incremental incentive proportionate to the proposed rebate or reduced fee. Furthermore, the Exchange believes the proposed modifications to Tier 3 of the Market Maker Non-Penny Pilot Add Volume Tiers will encourage Members to increase their order flow in Non-Penny Pilot securities on the Exchange. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange believes the proposed rule changes to Tiers 3, 6, and 8 will have no impact on intramarket competition as the proposed changes are non-substantive.

Next, the Exchange believes the proposed rule changes do 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 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 21% of the market share.<sup>25</sup> Therefore, no exchange possesses significant pricing power in the execution of option 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

<sup>21</sup> See e.g., the Firm, Broker Dealer, and Joint Back Office Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$0.82 per contract to Members satisfying the tier.

<sup>22</sup> See e.g., the Away Market Maker Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 2 offers a rebate of up to \$0.52 per contract to Members satisfying the tier.

<sup>23</sup> See e.g., the Customer Non-Penny Pilot Add Volume Tiers in the Exchange's Fee Schedule. Tier 4 offers a rebate of up to \$1.05 per contract to Members satisfying the tier.

<sup>24</sup> Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

<sup>25</sup> *Supra* note 3 [sic].

investors and listed companies.”<sup>26</sup> 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’ . . .”<sup>27</sup> Accordingly, the Exchange does not believe its proposed fee changes impose 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 Act<sup>28</sup> and paragraph (f) of Rule 19b-4<sup>29</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, 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.

<sup>26</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>27</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>29</sup> 17 CFR 240.19b-4(f).

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 Number SR–CboeBZX–2020–033 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–2020–033. 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 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. 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 Number SR–CboeBZX–2020–033 and should be submitted on or before May 11, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>30</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020–08210 Filed 4–17–20; 8:45 am]

**BILLING CODE 8011–01–P**

<sup>30</sup> 17 CFR 200.30–3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–88634; File No. SR–BOX–2019–19]

**Self-Regulatory Organizations; BOX Exchange LLC; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 2, To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as the Boston Security Token Exchange LLC**

April 14, 2020.

On September 27, 2019, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to adopt rules governing the listing and trading of equity securities that would be NMS stocks on the Exchange through a facility of the Exchange known as the Boston Security Token Exchange LLC. The proposed rule change was published for comment in the **Federal Register** on October 18, 2019.<sup>3</sup>

On November 29, 2019, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.<sup>5</sup> On December 26, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended the proposed rule change as originally filed.<sup>6</sup> On January 16, 2020, the Commission published Amendment No. 1 for notice and comment and instituted proceedings to determine whether to approve or disapprove the proposed

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

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

<sup>3</sup> See Securities Exchange Act Release No. 87287 (October 11, 2019), 84 FR 56022 (October 18, 2019) (“Original Notice”).

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 87641 (November 29, 2019), 84 FR 66701 (December 5, 2019). The Commission designated January 16, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> When the Exchange filed Amendment No. 1 to BOX–2019–19, it also submitted the text of the partial amendment as a comment letter to the filing, which the Commission made publicly available at <https://www.sec.gov/comments/sr-box-2019-19/srbox201919-6613675-202939.pdf> (“Amendment No. 1”).