

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

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

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-029 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2021-029. 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-2021-029 and should be submitted on or before May 19, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁴

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91637; File No. SR-CBOE-2021-013]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Rule 5.52(d) in Connection With a Market-Maker's Electronic Volume Transacted on the Exchange

April 22, 2021.

I. Introduction

On February 22, 2021, Cboe Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. The proposed rule change was published for comment in the **Federal Register** on March 12, 2021.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Rule 5.52(d) in connection with a Market-Maker's electronic volume transacted on the Exchange. Rule 5.52(d)(1) provides that if a Market-Maker never trades more than 20% of the Market-Maker's contract volume

electronically in an appointed class during any calendar quarter ("Electronic Volume Threshold"),⁴ a Market-Maker will not be obligated to quote electronically in any designated percentage of series within that class pursuant to subparagraph (d)(2) (which governs the continuous electronic quoting requirements for Market-Makers in their appointed classes). That is, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, the Market-Maker is required to provide continuous electronic quotes in that appointed classes going forward. Neither Rule 5.52(d)(1) nor (d)(2) permit a Market-Maker to reduce its electronic volume after surpassing the Electronic Volume Threshold in order to reset the electronic volume trigger or otherwise undo the resulting obligation to stream electronic quotes once the Electronic Volume Threshold is triggered in an appointed class.

According to the Exchange, Market-Makers accustomed to executing volume on the trading floor have sophisticated and complicated risk modeling associated with their floor trading activity, including quoting, monitoring, and responding to the trading crowd. However, the Exchange understands that while such Market-Makers do have separate systems or third-party platforms for quoting, monitoring and responding to electronic markets, because these Market-Makers are almost exclusively floor-based, their technology or other platforms enabling them to quote electronically do not achieve the level of sophistication or complexity as the systems used by Market-Makers accustomed to quoting electronically. Indeed, to satisfy the continuous electronic quoting requirements, a Market-Maker must provide continuous bids and offers for 90% of the time the Market-Maker is required to provide electronic quotes in an appointed option class on a given trading day and must provide continuous quotes in 60% of the series of the Market-Maker's appointed classes. The Exchange determines compliance by a Market-Maker with this quoting obligation on a monthly basis. In addition to this, a Market-Maker must, among other things, compete with other Market-Makers in its appointed classes, update quotations in response to changed market conditions in its appointed classes, maintain active markets in its appointed classes, and, overall, engage in a course of dealings reasonably calculated to

⁸⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91275 (March 8, 2021), 86 FR 14166 ("Notice").

⁴ The proposed rule change provides additional clarity within Rule 5.52(d)(1) by defining this threshold and adding the defined term throughout Rule 5.52(d)(1).

contribute to the maintenance of a fair and orderly market. Market-Makers that are predominantly floor-based generally do not have the technology or electronic trading sophistication to fully satisfy the continuous electronic quoting obligations, as well as other heightened standards required of a Market-Maker in its appointed classes electronically, once the Electronic Volume Threshold is triggered.

The Exchange has observed that, around the end of calendar year 2019, particularly given the significant increase in market volatility and unpredictability of market conditions in the months leading up to and during the COVID-19 pandemic,⁵ Market-Makers that almost exclusively executed their volume in open outcry and had not previously triggered an electronic quoting obligation pursuant to Rule 5.52(d)(2), incidentally breached the Electronic Volume Threshold in certain appointed classes and were thereby obliged to provide continuous electronic quotes in those classes going forward. As stated above, once a Market-Maker surpasses the Electronic Volume Threshold in an appointed class, and the electronic quoting obligation is triggered, Rules 5.52(d)(1) and (d)(2) do not permit a Market-Maker to reset the trigger—a Market-Maker is required to stream electronic quotes in that appointed class beginning the next calendar quarter and from there on out. As such, once the Electronic Volume Threshold was surpassed by Market-Makers accustomed to quoting on the trading floor, these Market-Makers had to be equipped to uphold continuous electronic quoting obligations by just the next calendar quarter, production of which was exacerbated by the volatile and unusual market conditions present in the markets over the past year. As a result, the Exchange has observed that at least one Market-Maker⁶ has been

⁵ The Exchange notes that after volatility and unusual market conditions beginning at the end of 2019 and continuously increasing through 2020 as a result of the impact of COVID19 and related factors, some market participants may have experienced significant trading losses, resulting in their limiting their trading behavior and risk exposure. The Exchange understands that firms, not otherwise highly active in the electronic markets, may have executed electronically in order to close positions, reduce exposure, and otherwise mitigate losses and reduce risk in light of market conditions experienced at various points throughout the year. These firms may have also reduced open outcry activity as part of the same risk-reducing strategy, resulting in a coincidental change in the mix of electronic versus open outcry volume for such generally floor-based Market-Makers.

⁶ The Exchange is aware of at least two Market-Makers that triggered the Electronic Volume Threshold in the last months of 2019 and were subsequently unable to satisfy the continuous electronic quoting obligations. One such Market-

unable to successfully fulfill its new continuous electronic quoting obligations in subsequent months. The Exchange understands this is due to the Market-Maker not having the appropriate technology to successfully provide continuous electronic quotes. Therefore, the Exchange proposes to amend Rule 5.52(d)(1) in a manner that provides a potential path of recourse for Market-Makers that incidentally exceed the Electronic Volume Threshold, due, for example, to extraordinary or extreme volatility as experienced in the markets in the last year, but that may not be able to satisfy the continuous electronic quoting requirement on a monthly basis going forward given their primarily floor-based operation. Specifically, the proposed rule change adopts Rule 5.52(d)(1)(B)⁷ which provides that the Exchange may, in exceptional cases and where good cause is shown, grant a Market-Maker a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A). If a Market-Maker trades more than 20% of the Market-Maker's contract volume electronically in an appointed class during a calendar quarter, the Market-Maker may submit to the Exchange a request that the Exchange consider a reset of the Electronic Volume Threshold in the appointed class. If the Exchange determines that a Market-Maker qualifies for a reset of the 20% threshold in an appointed class, then the Market-Maker will not become subject to the continuous electronic quoting requirements pursuant to subparagraph (d)(2) in the appointed class in the next calendar quarter, and will again become subject to subparagraph (d)(1)(A) in the appointed class. In order to determine if a Market-Maker qualifies for a reset of the Electronic Volume Threshold in an appointed class, the Exchange may consider: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; (iii) market conditions and

Maker had been registered as a Market-Maker on the Exchange since 1997 (however, such firm has recently been dissolved) and one has been registered as a Market-Maker on the Exchange since 2001. The Exchange also notes that there are other Market-Makers that are not currently subject to the continuous electronic quoting requirements in their appointed classes. For example, the Exchange is aware of at least three Market-Makers that are not currently obligated to provide continuous electronic quotes in SPX.

⁷ The proposed rule change also updates the format of Rule 5.51(d)(1) by adopting the title "Electronic Volume Threshold" and Rule 5.51(d)(1)(A) to govern the provision under current Rule 5.51(d)(1), and adopts the title "Continuous Electronic Quotes" for Rule 5.52(d)(2).

general trading activity in the appointed class; and (iv) any other factors as the Exchange deems appropriate in determining whether to approve a Market-Maker's request for an Electronic Volume Threshold reset. In this way, the proposed rule change allows those Market-Makers that predominantly provide liquidity on the trading floor and incidentally surpass (or have incidentally surpassed) the electronic volume threshold, and, subsequently, are not able to satisfy the continuous electronic quoting requirement on a monthly basis going forward, an opportunity to submit a request to the Exchange that they again be subject only to open outcry quoting requirements and continue to focus on providing liquidity in open outcry in accordance with their business models.⁸

Finally, the proposed rule change also removes the rollout period for new classes in Rule 5.52(d)(1), which currently provides that for a period of 90 days commencing immediately after a class begins trading on the System, this subparagraph (d)(1) governs trading in that class. The rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System.⁹ As of 2018, all classes listed for trading on the Exchange now trade on the same platform, the Exchange's System. Therefore, a rollout period is no longer necessary. All Market-Makers in new classes and likewise all new Market-Makers will be equally subject to the electronic volume threshold pursuant to Rule 5.52(d)(1) and (d)(2) upon starting out.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the

⁸ The Exchange notes that the proposed rule change does not preclude the application of Rule 13.15(g)(14)(A), which, as part of the Minor Rule Violation Plan ("MRVP"), allows the Exchange to impose a fine on Market-Makers for failure to meet their continuous quoting obligations, including on any Market-Maker that is able to "reset" upon Commission approval of this proposal. The Exchange additionally notes that the proposed rule change also does not preclude the Exchange from referring matters covered under the MRVP for formal disciplinary action, pursuant to Rule 13.15(f), whenever it determines that any violation is intentional, egregious or otherwise not minor in nature.

⁹ See Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (SR-CBOE-2002-05).

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's

Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of a national securities 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.

The Commission believes that the proposal to allow the Exchange, in exceptional cases and where good cause is shown, to grant a Market-Maker's request for a reset of the Electronic Volume Threshold in subparagraph (d)(1)(A) of Rule 5.52 should promote just and equitable principles of trade by not requiring a Market-Maker that is accustomed to floor trading, and potentially lacking the appropriate technology, to provide continuous electronic quotes. The Commission notes that in determining whether to grant a Market-Maker's request for a reset of the Electronic Volume Threshold, the Exchange may consider, among other things: (i) A Market-Maker's trading activity and business model in the appointed class; (ii) any previous requests for a reset of the Electronic Volume Threshold in the appointed class, including previously granted requests; and (iii) market conditions and general trading activity in the appointed class. The Commission believes that the proposed rule is reasonably designed to limit application of the reset to only those firms who incidentally breached the Electronic Volume Threshold in certain appointed classes due to extraordinary or extreme market volatility or other circumstances outside of the Market-Maker's control.

In addition, the Commission believes that the proposal to remove the rollout period for new classes in Rule 5.52(d)(1) is consistent with the Act. The Commission notes that the rollout period was implemented in connection with the transition of certain classes to the Exchange's former Hybrid System and that all classes listed for trading on the Exchange now trade on the same platform. The Commission believes the proposal will help to protect investors and the public interest by removing

impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

outdated and potentially confusing language from the Exchange's rules.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-2021-013) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91639; File No. SR-BX-2021-014]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 7, Section 118

April 22, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 13, 2021, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

The Exchange proposes to proposal to amend: (i) The Exchange's transaction fees and credits, at Equity 7, Section 118(a); and (ii) its Qualified Market Maker Program, at Equity 7, Section 118(f), as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

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 operates on the "taker-maker" model, whereby it generally pays credits to members that take liquidity and charges fees to members that provide liquidity. Currently, the Exchange has a schedule, at Equity 7, Section 118(a), which consists of several different credits that it provides for orders in securities priced at \$1 or more per share that access liquidity on the Exchange and several different charges that it assesses for orders in such securities that add liquidity on the Exchange. It also has a program, at Equity 7, Section 118(f), to reward those of its members that make significant contributions to the market.

Over the course of the last few years, the Exchange has experimented with various reformulations of its pricing schedule with the aim of increasing activity on the Exchange, improving market quality, and increasing market share.³ Although these changes have met with some success, the Exchange has yet to achieve the results it desires. Accordingly, the Exchange proposes to again revise its pricing schedule, in large part, in a further attempt to

³ See Securities Exchange Act Release No. 34-89554 (August 14, 2020), 85 FR 51518 (August 20, 2020) (SR-BX-2020-018); Securities Exchange Act Release No. 34-89114 (June 22, 2020), 85 FR 38418 (June 26, 2020) (SR-BX-2020-011); Securities Exchange Act Release No. 34-88857 (May 12, 2020), 85 FR 29766 (May 18, 2020) (SR-BX-2020-008); Securities Exchange Act Release No. 34-87271 (October 10, 2019), 84 FR 55621 (October 17, 2019) (SR-BX-2019-035); Securities Exchange Act Release No. 34-87093 (September 24, 2019), 84 FR 57530 (October 25, 2019) (SR-BX-2019-031); Securities Exchange Act Release No. 34-86447 (July 24, 2019), 84 FR 36989 (July 30, 2019) (SR-BX-2019-026); Securities Exchange Act Release No. 34-85912 (May 22, 2019), 84 FR 24834 (May 29, 2019) (SR-BX-2019-013).