Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2021–011. 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 (*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–CboeEDGA–2021–011 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10170 Filed 5–13–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91831; File No. SR–CboeBZX–2021–038]

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

May 10, 2021.

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 May 3, 2021, 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.

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 for its equity options platform ("BZX Options") in connection with certain fee codes and volume tiers, effective May 3, 2021.

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 16% of the market share and currently the Exchange represents only approximately 7.5% of the market share.[3] 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, which varies depending on the Member's capacity (Customer, Firm, Market Maker, etc.), whether the order adds or removes liquidity, and whether the order is in Penny or Non-Penny Program Securities. 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.

In particular, the Fee Codes and Associated Fees section of the Fee Schedule lists all available fee codes for orders on BZX Options. Currently, fee code PP is appended to all Non-Customer (*i.e.,* Firm, Broker Dealer, Joint Back Office, Market Maker, Away Market Maker and Professional capacities) orders that remove liquidity in Penny securities and assesses a fee of $0.50. The proposed rule change amends fee code PP so that it applies only to Market Maker, Away Market Maker and Professional orders that remove liquidity in Penny securities (the rate of $0.50 remains the same), and adopts fee code PD, which would apply to Firm, Broker Dealer and Joint Back Office orders that remove liquidity in Penny securities and also assesses the same rate of $0.50. In order to reflect the

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 27, 2021), available at *https://markets.cboe.com/us/options/market_statistics/*.

amended description for fee code PP, the proposed rule change updates the title of the ''Non-Customer Penny Take Volume Tiers'' in footnote 3 of the Fee Schedule, which are, and will continue to be, applicable to fee code PP, to the ''Market Maker, Away Market Maker and Professional Penny Take Volume Tiers''.

In particular, the proposed rule change restructures fee code PP to create a remove Penny liquidity fee code specific to Firm, Broker Dealer and Joint Back Office (PD) in order to adopt tiered pricing specific to these capacities (along with the remove Penny liquidity Customer fee code (PC)). As such, the proposed rule change adopts new Customer, Firm, Broker Dealer and Joint Back Office Take Volume Tiers in footnote 14 [4] of the Fee Schedule, which, as proposed, are applicable to new fee code PD and existing fee code PC.[5] Specifically, proposed Tier 1 offers an additional rebate of $0.01 per contract for qualifying orders (*i.e.,* yielding fee code PD or PC) where a Member has (1) a Step-Up ADRV [6] in Customer orders from March 2021 greater than or equal to 35,000 contracts, and (2) a Step-Up ADRV in Firm, Broker Dealer or Joint Back Office orders from March 2021 greater than or equal to 10,000 contracts. Proposed Tier 2 offers an additional rebate of $0.02 per contract for qualifying orders where a Member has (1) a Step-Up ADRV in Customer orders from March 2021 greater than or equal to 70,000 contracts, and (2) Member has a Step-Up ADRV in Firm, Broker Dealer or Joint Back Office orders from March 2021 greater than or equal to 20,000 contracts. The Exchange believes that a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office (as well as Customer) capacities may better facilitate the agency order flow executed particularly by these market participants on the Exchange. The Exchange recognizes that these types of Members can provide a different type of order flow than that of liquidity providers, such as Market Makers and Professionals. Particularly, Firm, Broker Dealer and Joint Back Office Members can be an important source of liquidity as they specifically facilitate Customer trading activity. Customer order flow, in turn, is important as it continues to attract liquidity to the Exchange. Enhanced liquidity on the Exchange benefits all market participants by providing more trading opportunities, signaling an increase in Market-Maker activity, which facilitates tighter spreads. This may cause an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem.

The proposed rule change also adds fee codes PC and PD to footnote 5 of the Fee Schedule, which provides a Routing Firm Member with the rebate that corresponds to orders that yield certain fee codes (PY, PA, PF, PN, NY, NA, NF, or NN).[7] A Routing Firm Member is a Member that acts as an options routing firm on behalf of one or more other Exchange Members and is able to route orders to the Exchange and to immediately give up the party (a party other than the Routing Firm itself or the Routing Firm's own clearing firm who will accept and clear any resulting transaction). Because the Routing Firm is responsible for the decision to route an order to the Exchange, the Exchange believes that such Member should be provided the rebate when orders that yield fee code PC or PD are executed. In connection with this change, the Exchange also proposes to append footnote 5 to fee codes PC and PD in the Fee Codes and Associated Fees table of the Fee Schedule.

The Exchange also proposes to restructure its NBBO Setter Tiers under footnote 4 of the Fee Schedule. Currently, the Exchange offers five NBBO Setter Tiers that provide additional rebates between $0.01 and $0.05 per contract for qualifying orders (*i.e.,* that yield fee code PM, PN, XM or XN [8] and establish a new NBBO) where a Member meets certain liquidity thresholds. First, the proposed rule change eliminates the following tiers:

- Tier 1, which currently provides an additional rebate of $0.01 per contract per qualifying order (*i.e.,* yielding fee code PM, PN, XM or XN [9] and establishes a new NBBO) where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.20% of average OCV and (2) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal 0.05% of average OCV;
- Tier 4, which currently provides an additional rebate of $0.04 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 1.80% of average OCV, (2) an ADAV in Non-Customer Non-Penny orders greater than or equal to 0.20% of average OCV, and (3) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal to 0.50% of average OCV; and
- Tier 5, which currently provides an additional rebate of $0.05 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 2.55% of average OCV, (2) an ADAV in Non-Customer Non-Penny orders greater than or equal to 0.25% of average OCV, and (3) has an ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO greater than or equal to 0.80% of average OCV.

Next, the proposed rule change amends Tier 2 and Tier 3 (new Tier 1 and Tier 2, respectively, as a result of the proposed deletion of the above-listed tiers). Current Tier 2 provides an additional rebate of $0.02 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.40% of average OCV, and (2) an ADAV in Firm, Market Maker, Away Market Maker orders that establish a new NBBO greater than or equal to 0.15% of average OCV. Tier 3 currently provides an additional rebate of $0.03 per contract per qualifying order where a Member has (1) an ADAV in Non-Customer orders greater than or equal to 0.75% of average OCV, and (2) an ADAV in Firm, Market Maker or Away Market Maker orders that establish a

[4] As a result, the proposed change moves the Index License Surcharge Fees table, currently in footnote 14, to new footnote 15, and also reflects this update by amending footnote 14, currently appended to fee codes BM, BN, BO, GM, GN and GO in the Fee Codes and Associated Fees section, to footnote 15.

[5] Orders yielding fee code PC are Customer orders that remove liquidity in Penny Securities and are assessed a fee of $0.50.

[6] ''ADRV'' means average daily removed volume calculated as the number of contracts removed, per day.

[7] Fee codes NA, NF, NN and NY are appended to liquidity adding orders in Non-Penny Pilot [sic] securities that are Professional, Firm/Broker Dealer/Joint Back Office, Away Market-Maker and Customer orders, respectively. Fee codes PA, PF, PN and PY are appended to liquidity adding orders in Penny Securities that are Professional, Firm/Broker Dealer/Joint Back office, Away Market-Maker and Customer orders, respectively.

[8] Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.29, orders yielding fee code PN are Away Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.26, orders yielding fee code XM are Market Maker orders in XSP options that add liquidity and are offered a rebate of $0.29, and orders yielding fee code XN are Away Market Maker orders in XSP that add liquidity and are offered a rebate of $0.26.

[9] Orders yielding fee code PM are Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.29, orders yielding fee code PN are Away Market Maker orders that add liquidity in Penny Securities and are offered a rebate of $0.26, orders yielding fee code XM are Market Maker orders in XSP options that add liquidity and are offered a rebate of $0.29, and orders yielding fee code XN are Away Market Maker orders in XSP that add liquidity and are offered a rebate of $0.26.

new NBBO greater than or equal to 0.30% of average OCV. The proposed rule change deletes the first prong of criteria in each of current Tier 2 and Tier 3 (new Tier 1 and Tier 2, as proposed) and updates the second prong of criteria in each of current Tier 2 and Tier 3 by increasing the threshold of ADAV in Firm, Market Maker or Away Market Maker orders that establish a new NBBO as a percentage of average OCV from 0.15% to 0.25% in current Tier 2 (new Tier 1) and from 0.30% to 0.45% in Tier 3 (new Tier 2). The proposed rule change also decreases the additional rebate in current Tier 2 (new Tier 1) from $0.02 to $0.01 and in current Tier 3 (new Tier 2) from $0.03 to $0.02.

The Exchange also proposes to restructure its Market Maker Penny Add Volume Tiers under footnote 6 of the Fee Schedule. The Exchange currently offers 13 Market Maker Penny Add Volume Tiers that provide enhanced rebates between $0.33 and $0.48 per contract for qualifying Market Maker orders (*i.e.,* that yield fee code PM or XM) where a Member meets certain liquidity thresholds. First, it proposes to consolidate the Market Maker Penny Add Volume Tiers by eliminating the following tiers:

- Tier 3, which currently offers an enhanced rebate of $0.40 per contract for qualifying orders (*i.e.,* yielding fee code PM or XM) where a Member has (1) an ADAV [10] in Market Maker orders greater than or equal to 0.15% of average OCV,[11] and (2) an ADRV in Market Maker orders greater than or equal to 0.15% of average OCV;
- Tier 4, which currently offers an enhanced rebate of $0.40 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV, and (2) on BZX Equities an ADV [12] greater than or equal to 0.60% of average TCV; [13]
- Tier 6, which currently offers an enhanced rebate of $0.41 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.25% of average OCV, and (2) an ADRV in Market Maker orders greater than or equal to 0.25% of average OCV;
- Tier 9, which currently offers an enhanced rebate of $0.42 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.35% of average OCV, and (2) an ADRV in Market Maker orders greater than or equal to 0.35% of average OCV;
- Tier 10, which currently offers an enhanced rebate of $0.43 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.15% of average OCV, (2) a Step-Up ADAV in Market-Maker orders from September 2020 greater than or equal to 0.10% of average OCV, (3) on BZX Equities an ADV greater than or equal to 0.60% of average TCV, and (4) on BZX Equities a Step-Up ADV from September 2020 greater than or equal to 0.05% of average TCV;
- Tier 11, which currently offers an enhanced rebate of $0.44 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.20% of average OCV, (2) a Step-Up ADAV in Market Maker orders from September 2020 greater than or equal to 0.15% of average OCV, (3) on BZX Equities an ADV greater than or equal to 0.60% of average TCV, and (4) on BZX Equities a Step-Up ADV from September 2020 greater than or equal to 0.10% of average TCV; and
- Tier 12, which currently offers an enhanced rebate of $0.44 per contract for qualifying orders where a Member has (1) an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV, (2) an ADAV in Market Maker Non-Penny orders greater than or equal to 0.15% of average OCV, and (3) on BZX Equities an ADV greater than or equal to 1.00% of average TCV.

As a result of the elimination of the above-listed tiers, the proposed rule change updates current Tier 5 to new Tier 3, current Tier 7 to new Tier 4, current Tier 8 to new Tier 5, current Tier 13 to new Tier 6 and current Tier 14 to new Tier 7. The criteria and enhanced rebates offered under each of these tiers remains the same, save for Tier 8 (new Tier 5). The proposed rule change updates the criteria in current Tier 8 (new Tier 5), in which a Member must have an ADAV in Market Maker orders greater than or equal to 0.50% of average OCV, by decreasing the threshold of ADAV in Market Maker orders as a percentage of average OCV from 0.50% to 0.45%. The current enhanced rebate offered under current Tier 8 (new Tier 5) remains the same ($0.42). Finally, the proposed rule change amends the Market Maker Penny Add Volume Tiers by adopting new Tier 8, which offers an enhanced rebate of $0.48 per contract for qualifying orders where a Member has an ADAV in Market Maker orders greater or equal to 1.50% of average OCV.

The Exchange proposes to eliminate the above-listed Market Maker Penny Add Volume Tiers and NBBO Setter Tiers as it no longer wishes to, nor is it required to, maintain such tiers. More specifically, the proposed rule change deletes these tiers as the Exchange would rather consolidate the Market Maker Penny Add Volume Tiers and NBBO Setter Tiers, many of which have not been achieved in several months, and redirect resources and funding into other programs and tiers intended to incentivize increased order flow.

The Exchange believes that the proposed updates to and addition of tiers under the Market Maker Add Volume Penny Tiers and the NBBO Setter Tiers are intended to continue to encourage increased Market Maker order flow as well as NBBO setting order flow to the Exchange, which may facilitate tighter spreads and more price improvement opportunities, signaling increased activity from other market participants, and thus ultimately contributing to deeper and more liquid markets and a more robust and well-balanced market ecosystem on the Exchange, to the benefit of all market participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[14] in general, and furthers the objectives of Section 6(b)(4),[15] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling,

[10] "ADAV" means average daily added volume calculated as the number of contracts added, per day.

[11] "OCC Customer Volume" or "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.

[12] "ADV" means average daily volume calculated as the number of contracts added or removed, combined, per day.

[13] "TCV" means total consolidated volume calculated as the volume reported by all exchanges to the consolidated transaction reporting plan 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.

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

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, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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 proposed rule change 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. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[17] including the Exchange,[18] 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 a 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.

In particular, the Exchange believes that proposed fee code PD, applicable to Firm, Broker Dealer and Joint Back Office orders that remove liquidity in Penny Securities, is reasonable, equitable and not unfairly discriminatory because current fee code PP already applies in the same manner to such Members' orders, and assesses the same rate ($0.50), as proposed fee code PD. Like fee code PP, proposed fee code PD and its corresponding rate will apply automatically and uniformly to all qualifying orders. The proposed rule change merely splits up the Member capacities to which fee code PP currently applies across two fee codes so that the Exchange may create a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office orders that remove Penny liquidity (along with the remove Penny liquidity Customer fee code (PC)). In addition to this, the Exchange believes that it is reasonable, equitable and not unfairly discriminatory to allow Routing Firm Members to receive the corresponding rebates on orders yielding fee codes PC and PD and identified as Designated Give Ups because these are the primary rebates in place on the Exchange and reflect the primary remove liquidity that the Exchange is seeking to attract from Routing Firms. The Fee Schedule already permits this for Designated Give Ups specified on orders that yield eight other fee codes. By providing a rebate directly to the party making the routing decision to direct certain orders to the Exchange (*i.e.,* the Routing Firm), which is consistent with both the Exchange's historic practice and the purpose behind a rebate (*i.e.,* to incentivize the order being directed to the Exchange), the Exchange believes that the proposed rule change will result in increased remove liquidity on the Exchange, to the benefit of all Exchange participants (as described in further detail below).

The Exchange believes that a tiered pricing program specific to Firm, Broker Dealer and Joint Back Office (as well as Customer) orders that remove Penny liquidity is reasonable and equitable because it is designed to facilitate increased agency order flow executed particularly by these market participants on the Exchange. As described above, the Exchange recognizes that these types of Members can provide a different type of order flow than that of liquidity providers, such as Market Makers and Professionals. Particularly, Firm, Broker Dealer and Joint Back Office Members can be an important source of liquidity as they specifically facilitate Customer trading activity. Customer order flow, in turn, is important as it continues to attract liquidity to the Exchange. Enhanced liquidity on the Exchange benefits all market participants by providing more trading opportunities, signaling an increase in Market-Maker activity, which facilitates tighter spreads, in turn signaling a corresponding increase in order flow from other market participants, and ultimately contributing overall towards a robust and well-balanced market ecosystem.

The Exchange also believes that the proposed criteria in Tier 1 and Tier 2 under the new Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers is reasonable as it is comparable to other criteria offered under similar Take Volume Tiers which also incorporate Step-Up average volume over a baseline month.[19] The Exchange believes that incorporating Step-Up ADRV into the criteria under the new tiers is reasonably designed to encourage Members to submit remove order flow to the Exchange. The Exchange believes an increase in liquidity executing orders may attract more liquidity adding order flow to take advantage of the increase in execution opportunities, thereby contributing to deeper, more liquid markets and price discovery. In addition to this, the Exchange believes that the proposed additional rebates that correspond to each new tier are reasonable as they are reasonably based on the difficulty of satisfying the proposed tiers' criteria and thus appropriately reflect the incremental difficulty between achieving Tier 1 and Tier 2, which requires a higher number of contracts over which a Member must increase liquidity-taking order flow. The Exchange believes that the proposed additional rebates are in line with the additional rebates currently offered under other volume tiers in the Fee Schedule.[20]

The Exchange believes it is reasonable to eliminate certain tiers, many of which have been unused for several months, under the Market Maker Penny Add Volume Tiers and the NBBO Setter Tiers in order to consolidate these tiered pricing programs and redirect resources and funding into other programs and tiers intended to incentivize increased order flow. The Exchange again notes that it is not required to maintain such tiers.

The Exchange believes that modestly easing the criteria in Market Maker Penny Add Volume Tier 5 (current Tier 8) and adopting new Tier 8 is reasonable as it is designed to encourage Market Makers to increase their order flow to

[17] *See, e.g.,* NYSE Arca Options Fee Schedule, Discount in Take Liquidity Fees for Professional Customer and Non-Customer Liquidity Removing Interest tiers, which provide discounted amounts between $0.02 and $0.04 per contract for members reaching certain thresholds of customer posted interest and professional/non-customer liquidity removing interest; *and* 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 orders where Members meet certain volume thresholds;

[18] *See, e.g.,* BZX Options Fee Schedule, footnote 6, Market Maker Penny Add Volume Tiers; footnote 4, NBBO Setter Tiers; *and* footnote 8, Firm, Broker Dealer, and Joint Back Office Non-Penny Add Volume Tiers.

[19] *See* BZX Options Fee Schedule, footnote 6, Market Maker Penny Add Volume Tiers.

[20] *See* BZX Options Fee Schedule, footnote 4, NBBO Setter Tiers, rates under which are comparable as existing and as proposed in this filing.

the Exchange to achieve the proposed tiers. More specifically, the Exchange believes that adopting a new tier may encourage Members to increase their ADAV in Market Makers orders over a modestly higher percentage of average OCV and that reducing the difficulty of achieving an existing tier offers alternative criteria to the Market Maker Penny Add Volume Tiers, as restructured, for Members to strive to achieve by submitting the requisite add volume order flow. An increase in Market Maker add volume, particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, 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 the proposed criteria in Tier 5 (current Tier 8) and new Tier 8, and the proposed enhanced rebate in new Tier 8 and existing rebate in Tier 5 (current Tier 8), reasonably reflect the incremental difficulty in achieving the remaining Market Maker Penny Add Volume Tiers, and are in line with the criteria and enhanced rebates offered under the remaining Market Maker Penny Add Volume Tiers. Indeed, the Exchange believes that the difficulty in achieving the proposed criteria under Tier 5 (current Tier 8), while modestly reduced, remains in line with the difficulty in achieving different, yet comparable criteria in Tier 4 (current Tier 7), which continues to offer the same enhanced rebate of $0.42. Also, the criteria in proposed Tier 8 is incrementally more difficult than criteria in Tier 7 (current Tier 14) (1.50% of ADAV over average OCV as compared to 0.75%), therefore, the Exchange believes that the proposed enhanced rebate of $0.48, as compared to the $0.46 rebate that corresponds to Tier 7, is appropriate.

Likewise, the Exchange believes that the amended criteria in NBBO Setter Tier 1 (current Tier 2) and Tier 2 (current Tier 3) continues to be reasonably designed to encourage Members to increase their liquidity on the Exchange, specifically NBBO setting add volume order flow. The Exchange believes that the proposed modifications to existing criteria in Tier 1 (current Tier 2) and Tier 2 (current Tier 3) results in incrementally less difficult criteria to achieve, as the proposed rule change removes the entire threshold requirement in prong 1 under each while only modestly increasing the remaining percentage of ADAV in Firm and Market Maker (including Away Market Maker) orders that establish a new NBBO over average OCV. As such, the Exchange believes that the proposed criteria, modestly reduced in difficulty, will incentivize Members to increase their NBBO setting add volume order flow to achieve the proposed tiers, which benefits all market participants by incentivizing continuous display of and opportunity to execute at the best prices, signaling other market participants to take the additional execution opportunities provided by such liquidity. The Exchange also believes the modest reduction in the corresponding additional rebates offered in Tier 1 (current Tier 2) and Tier 2 (current Tier 3) appropriately reflect the modest reduction in the difficulty in achieving the respective tier criteria.

The Exchange believes that the proposal represents an equitable allocation of fees and is not unfairly discriminatory because the Customer, Firm, Broker Dealer and JBO Remove Penny Tiers, Market Maker Add Penny Tiers and NBBO Setter Tiers, as proposed, will continue to apply uniformly to all qualifying Members, in that all Members that submit the requisite order flow per each tier program have the opportunity to compete for and achieve the proposed tiers. The additional/enhanced rebates (proposed and existing) will apply automatically and uniformly to all Members that achieve the proposed corresponding criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Member qualifying for the proposed tiers, the Exchange believes that at least three Market Makers will reasonably be able to compete for and achieve the proposed criteria in each of the proposed Market Maker Penny Add Volume Tiers (Tier 5 and Tier 8); between two and three Market Makers will reasonably be able to compete for and achieve the proposed criteria in each of the proposed NBBO Setter Tiers (Tier 1 and Tier 2); and between two and three Members will reasonably be able to compete for and achieve the proposed criteria in each of the proposed Customer, Firm, Broker Dealer and Joint Back Office Penny Take Volume Tiers (Tier 1 and Tier 2). The Exchange notes, however, that the proposed tiers are open to any Member that satisfies the tiers' criteria. The Exchange lastly notes that it does not believe the proposed tiers will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the criteria in any of the proposed tiers, the Member will merely not receive the corresponding additional/enhanced rebate.

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 change 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." [21]

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 change applies to all Members equally in that all Members are eligible to achieve the tiers' proposed criteria, have a reasonable opportunity to meet the tiers' proposed criteria and will all receive the corresponding rebates (as existing and proposed) if such criteria is met. Overall, the proposed change is designed to attract additional Customer and agency order flow, Market Maker order flow, and NBBO setting order flow to the Exchange. The Exchange believes that the modified tier criteria would incentivize market participants to strive to increase such order flow to the Exchange to meet the proposed criteria. Such order flow, as described above, brings different, yet key, liquidity and trading activity to the Exchange, resulting in overall tighter spreads, more execution opportunities at improved prices, and/or deeper levels of liquidity, which ultimately improves price

[21] Securities Exchange Act Release No. 51808, 70 FR 37495, 37498–99 (June 29, 2005) (S7–10–04) (Final Rule).

transparency, provides continuous trading opportunities and enhances market quality on the Exchange, and generally continues to encourage Members to send orders to the Exchange, thereby contributing towards a robust and well-balanced market ecosystem to the benefit of all market participants.

Next, the Exchange believes the proposed rule change 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 director 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 16% of the market share.[22] 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 investors and listed companies.'' [23] 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' . . . .''.[24] 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 Act [25] and paragraph (f) of Rule 19b–4 [26] 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. 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–2021–038 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–2021–038. 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–2021–038 and should be submitted on or before June 4, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–10178 Filed 5–13–21; 8:45 am]

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[22] *See supra* note 3.

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[24] 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)).

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91807; File No. SR–NYSE–2020–89]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a 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 Amend Rule 7.35C

May 10, 2021.

On October 23, 2020, New York Stock Exchange LLC (''NYSE'' or ''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

[1] 15 U.S.C. 78s(b)(1).