operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[16]

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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2023–046 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–CboeEDGX–2023–046. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2023–046 and should be submitted on or before August 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–16112 Filed 7–28–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97977; File No. SR–CboeBZX–2023–049]

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

July 25, 2023.

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 July 12, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The 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'' or ''BZX Equities'') 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 applicable to its equities trading platform (''BZX Equities'') as follows: (1) adopt a new Add Volume Tier and renumber the remaining tiers; (2) adopt a new Step-Up Tier; and (3) modifying the rates associated with certain fee codes. The Exchange proposes to implement the proposed change to its fee schedule on July 3, 2023.[3]

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 15% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12), (a)(59).

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

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee change on June 30, 2023 (SR-CboeBZX–2023–045). On July 12, 2023, the Exchange withdrew that proposal and submitted this proposal.

[4] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 22, 2023), available at *https://www.cboe.com//equities/market_statistics/.*

exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity.[5] For orders in securities priced below $1.00, the Exchange does not provide a rebate or assess a fee for orders that add liquidity and assesses a fee of 0.30% of total dollar value for orders that remove liquidity.[6] 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.

Add Volume Tiers

Pursuant to footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers seven Add Volume Tiers that provide Members an opportunity to receive enhanced rebates for orders yielding fee codes B,[7] V,[8] and Y [9] where a Member reaches certain add volume-based criteria offered in each tier. The Exchange now proposes to introduce a new Add Volume Tier 4 and renumber existing Add Volume Tiers 4–7. The proposed criteria of new Add Volume Tier 4 is as follows:

- Proposed Add Volume Tier 4 will provide a rebate of $0.0028 per share for qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where (1) Member is enrolled in at least 50 BZX-listed LMP Securities [10] for which it meets the following criteria for at least 50% of the trading days in the applicable month: (i) Member has an NBBO Time [11] ≥15% or an NBBO Size Time [12] ≥25%; and (ii) Member has a Displayed Size Time [13] ≥90%; and (2) Member is enrolled in at least 30 LMM Securities; [14] and (3) Member has an ADAV as a percentage of TCV [15] ≥0.15%.

The Exchange's proposal to introduce a new Add Volume Tier 4 is designed to provide Members with an additional way in which to receive an enhanced rebate if certain criteria are satisfied, specifically by incentivizing additional volume in securities identified by the Exchange, including BZX-listed securities. The Exchange believes that by introducing proposed Add Volume Tier 4 Members are incentivized to add displayed volume on the Exchange, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Step-Up Tiers

Pursuant to footnote 2 of the Fee Schedule, the Exchange currently offers two Step Up Tiers that provide Members an opportunity to receive an enhanced rebate from the standard rebate for liquidity adding orders that yield fee codes B, V, and Y where they increase their relative liquidity each month over a predetermined baseline. The Exchange now proposes to add a new Step-Up Tier 1. Proposed Step-Up Tier 1 would provide for the following:

- Proposed Step-Up Tier 1 would offer an enhanced rebate of $0.0028 per share for qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where Member has a Step-Up ADAV [16] from June 2023 ≥10,000,000.

Additionally, the Exchange notes that Proposed Step-Up Tier 1 will expire no later than September 30, 2023, which the Exchange will indicate on the Exchange's fee schedule.

The Exchange notes that the Step-Up Tiers in general are designed to provide Members with additional opportunities to receive enhanced rebates by increasing their order flow to the Exchange, which further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants. Like other Step-Up Tiers, the proposed Step-Up Tier 1 is designed to give members an additional opportunity to receive an enhanced rebate for orders meeting the applicable criteria. Increased overall order flow benefits all Members by contributing towards a robust and well-balanced market ecosystem.

Fee Code Changes

The Exchange offers various fee codes for orders routed away from the Exchange. The Exchange is proposing to modify the routing fees associated with fee codes BY,[17] BJ,[18] AX,[19] AA,[20] AY,[21] P,[22] and RY [23] to match the base add or remove rate for the associated market center to which the order is routed. The rebates for fee codes BJ, AA, and P will be revised to $0.0016 per share in securities priced above $1.00.[24] The rebates for fee codes BY and AY will be revised to $0.0002 per share in securities priced above $1.00.[25] The fee for fee code RY will be revised to $0.0020 per share in securities priced above $1.00.[26] The fee for fee code AX will be revised to $0.0030 per share in securities priced above $1.00.[27] There

[5] *See* BZX Equities Fee Schedule, Standard Rates.

[6] *Id.*

[7] Orders yielding Fee Code ''B'' are displayed orders adding liquidity to BZX (Tape B).

[8] Orders yielding Fee Code ''V'' are displayed orders adding liquidity to BZX (Tape A).

[9] Orders yielding Fee Code ''Y'' are displayed orders adding liquidity to BZX (Tape C).

[10] ''LMP Securities'' means a list of securities included in the Liquidity Management Program, the universe of which will be determined by the Exchange and published in a circular distributed to Members and on the Exchange's website. Such LMP Securities will include all Cboe-listed ETPs and certain non-Cboe listed-ETPs for which the Exchange wants to incentive Members to provide enhanced market quality. All Cboe-listed securities will be LMP Securities immediately upon listing on the Exchange. The Exchange will not remove a security from the list of LMP Securities without 30 days prior notice.

[11] ''NBBO Time'' means the average of the percentage of time during regular trading hours during which the Member maintains at least 100 shares at each of the NBB and NBO.

[12] ''NBBO Size Time'' means the percentage of time during regular trading hours during which there are size-setting quotes at the NBBO on the Exchange.

[13] ''Displayed Size Time'' means the percentage of time during regular trading hours during which the Member maintains at least 2,500 displayed shares on the bid and separately maintains at least 2,500 displayed shares on the offer that are priced no more than 2% away from the NBB and NBO, respectively.

[14] ''LMM Securities'' are BZX-listed securities for which a Lead Market Maker (''LMM'') for which the Member is the LMM.

[15] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[16] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[17] Fee code BY is appended to orders routed to BYX using Destination Specific, TRIM or SLIM routing strategy.

[18] Fee code BJ is appended to orders routed to EDGA using TRIM or SLIM routing strategy.

[19] Fee code AX is appended to orders routed to EDGX using ALLB routing strategy.

[20] Fee code AA is appended to orders routed to EDGA using ALLB routing strategy.

[21] Fee code AY is appended to orders routed to BYX using the ALLB routing strategy.

[22] Fee code P is appended to orders routed to EDGX that add liquidity.

[23] Fee code RY is appended to orders routed to BYX that add liquidity.

[24] *See* BZX Equities Fee Schedule, Standard Rates; EDGA Equities Fee Schedule, Standard Rates.

[25] *See* BYX Equities Fee Schedule, Standard Rates.

[26] *Id.*

[27] *See* EDGX Equities Fee Schedule, Standard Rates.

are no changes to the fees or rebates associated with securities priced below $1.00.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[28] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [29] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [30] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers as well as section 6(b)(4) [31] as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The Exchange believes that its proposal to introduce a new Add Volume Tier 4 and a new Step-Up Tier 1 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 believes the proposed Add Volume Tier 4 and Step-Up Tier 1 are reasonable as they serve to incentivize Members to increase their liquidity-adding, displayed volume, which benefit all market participants by incentivizing continuous liquidity and thus, deeper, more liquid markets as well as increased execution opportunities. Particularly, the proposed incentives are designed to incentivize continuous displayed liquidity, which signals other market participants to take the additional execution opportunities provided by such liquidity. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency, and improves market quality for all investors.

The Exchange believes the proposed changes to fee codes BY, BJ, AX, AA, AY, P, and RY are reasonable and not unfairly discriminatory as these changes will apply to all Members and do not represent a significant departure from the Exchange's general pricing structure. Indeed, the proposed changes to these fee codes are intended to match the base add or remove rates on the Exchanges affiliates.[32] The Exchange also believes the proposed Add Volume Tier 4 and Step-Up Tier 1 represent an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for those tiers and would have the opportunity to meet a tier's criteria and would receive the proposed rebate if such criteria is met. Further, the proposed rebates are commensurate with the proposed criteria. That is, the rebates reasonably reflect the difficulty in achieving the applicable criteria as proposed. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would definitely result in any Members qualifying for the proposed tier. While the Exchange has no way of predicting with certainty how the proposed tiers will impact Member activity, the Exchange anticipates that at least one Member will be able to satisfy the criteria proposed under proposed Add Volume Tier 4 and at least one Member will be able to satisfy the criteria proposed under proposed Step-Up Tier 1. The Exchange also notes that proposed tier/rebate will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the modified tier, the Member will merely not receive that corresponding enhanced rebate.

Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[33] including the Exchange,[34] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [35]

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed tier changes apply to all Members equally in that all Members are eligible for the proposed Add Volume Tier 4 and proposed Step-Up Tier 1, have a reasonable opportunity to meet the tiers' criteria and will receive the corresponding additional rebates if such criteria are met. Additionally, the proposed tiers are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed tier criteria would incentivize market participants to direct liquidity adding displayed order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] *Id.*

[31] 15 U.S.C. 78f(b)(4)

[32] *Supra* notes 24–27.

[33] *See e.g.,* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[34] *See e.g.,* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

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

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

The Exchange believes the proposal to revise the applicable fees or rebates associated with routing orders away from the Exchange does not a burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The fees and rebates associated with routing orders away from the Exchange apply to all Members on an equal and non-discriminatory basis and Members can choose to use (or not use) the Exchange's routing functionality as part of their decision to submit order flow to the Exchange.

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 direct their order flow, including 15 other equities exchanges and off exchange venues and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 15% [36] of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [37] 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'. . ..''.[38] 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 [39] and paragraph (f) of Rule 19b–4 [40] 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 (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–049 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–2023–049. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–049 and should be submitted on or before August 21, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2023–16122 Filed 7–28–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–424, OMB Control No. 3235–0473]

Proposed Collection; Comment Request; Extension: Rule 17Ad–3(b)

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services,

[36] *Supra* note 4.

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

[38] *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)).

[39] 15 U.S.C. 78s(b)(3)(A).

[40] 17 CFR 240.19b–4(f).

[41] 17 CFR 200.30–3(a)(12).