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–CBOE–2024–006 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–CBOE–2024–006. 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, as modified by Amendment No. 1, 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–CBOE–2024–006 and should be submitted on or before February 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[64]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01620 Filed 1–26–24; 8:45 am]

BILLING CODE 8011–01–P

[64] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on Wednesday, January 31, 2024, at 10:00 a.m. (ET).

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549 and will be simultaneously webcast on the Commission's website at *www.sec.gov.*

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to adopt new rules to further define the phrase ''as a part of a regular business'' as used in the statutory definitions of the terms ''dealer'' and ''government securities dealer'' under the Securities Exchange Act of 1934, in connection with certain liquidity providers.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: January 24, 2024.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01758 Filed 1–25–24; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99414; File No. SR–CboeBZX–2024–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 11.9(c)(6) and Rule 11.13(a)(4)(D) To Permit the Use of BZX Post Only Orders at Prices Below $1.00

January 23, 2024.

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 January 8, 2024, 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.

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

[2] 17 CFR 240.19b–4.

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 Rule 11.9(c)(6) and Rule 11.13(a)(4)(D) to permit the use of BZX Post Only Orders at prices below $1.00. 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

Trading in sub-dollar securities both on- and off-exchange has grown significantly since early 2019. An analysis of SIP[3] data by the Exchange found that sub-dollar average daily volume has increased 313% as compared to volumes in the first quarter of 2019.[4] During this period, on-exchange average daily volume in sub-dollar securities grew from 442 million

[3] The ''SIP'' refers to the centralized securities information processors.

[4] *See* ''How Subdollar Securities are Trading Now'' (March 16, 2023). Available at *https://www.cboe.com/insights/posts/how-subdollar-securities-are-trading-now/.*

shares per day to 1.8 billion shares per day.[5] A separate analysis of SIP and FINRA Trade Reporting Facility (''TRF'')[6] data indicated that exchanges represented approximately 39.8% market share in sub-dollar securities, with a total of 1,638 securities trading below $1.00.[7] As an exchange group, Cboe had approximately 13.3% of market share in sub-dollar securities in the first quarter of 2023.[8]

As a result of the growth in sub-dollar trading, the Exchange proposes to amend Rule 11.9(c)(6) in order to permit a BZX Post Only Order to post to the BZX Book[9] at prices below $1.00. As defined in Rule 11.9(c)(6), a BZX Post Only Order is ''[a]n order that is to be ranked and executed on the Exchange pursuant to Rule 11.12 and Rule 11.13(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the BZX Book. . .''. Accordingly, a BZX Post Only Order does not remove liquidity, but rather posts to the BZX Book to the extent permissible. Additionally, the Exchange proposes to amend Rule 11.13(a)(4)(D) to describe the manner in which bids or offers priced below $1.00 per share are executed against orders resting on the BZX Book. The Exchange believes the proposed changes will provide Users[10] with an additional order type to utilize when submitting order flow to the Exchange in securities priced below $1.00, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Currently, BZX Post Only Orders priced below $1.00 are automatically treated as orders that remove liquidity.[11] In order to permit a BZX Post Only Order to post to the BZX Book at prices below $1.00, the Exchange proposes to amend Rule 11.9(c)(6) to remove language that states that a BZX Post Only Order ''will remove contra-side liquidity from the BZX Book if the order is an order to buy or sell a security priced below $1.00. . .''. While the Exchange's economic best interest calculation[12] will remain the same as is currently in-place for securities priced at or above $1.00, the impact of this proposal will modify the outcome of BZX Post Only Orders in securities priced below $1.00 for Users who choose to utilize this particular order type. Under this proposal, BZX Post Only Orders priced below $1.00 will only remove liquidity if the value of the overall execution (taking into account all applicable fees and rebates) make it economically beneficial for the order to remove liquidity. The Exchange has received User feedback requesting the ability to utilize BZX Post Only Orders in securities priced below $1.00 in order to allow Users to operate a single trading strategy for securities at all prices even though the execution cost economics for securities priced below $1.00 may only provide a slight economic benefit for Users who choose to utilize BZX Post Only Orders in securities priced below $1.00.

In addition to the proposed amendment to Rule 11.9(c)(6), the Exchange proposes an amendment to its order handling procedures in order to permit Non-Displayed Orders[13] and orders subject to display-price sliding (collectively, ''Resting Orders'') which are not executable at their most aggressive price due to the presence of a contra-side BZX Post Only Order to be executed at one minimum price variation less aggressive than the order's most aggressive price.[14] Currently, similar order handling behavior applies only to securities priced at or above $1.00.[15] When proposed in 2011, the Resting Order Execution Filing stated that the order handling functionality was not necessary for securities priced below $1.00 as the Exchange did not have the ability to quote in sub-pennies and the system limitations that market participants may encounter if attempting to execute in increments finer than $0.0001.[16] Given the rise in sub-dollar trading discussed above, the Exchange now proposes to expand the order handling functionality introduced by the Resting Order Execution Filing to securities priced below $1.00.

Rule 11.13(a)(4)(D) states that for securities priced above $1.00, incoming orders that are market orders or limit orders priced more aggressively than a displayed order on the same side of the market, the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. The Exchange proposes that for securities priced below $1.00, incoming orders that are market orders or limit orders priced more aggressively than a displayed order on the same side of the market, the Exchange will execute the incoming order at, in the case of an incoming sell order, one minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one minimum price variation more than the price of the displayed order. The different treatment of securities priced below $1.00 from securities priced at or above $1.00 arises from limitations within the System,[17] which cannot process executions out to five decimal places.

In order to demonstrate the proposed order handling behavior for securities priced below $1.00, the Exchange has included the following examples:

Example 1

- Assume the NBB is $0.50 and the NBO is $0.53. There is no resting interest on the BZX Book.

[5] *Id.*

[6] Trade Reporting Facilities are facilities through which FINRA members report off-exchange transactions in NMS stocks, as defined in SEC Rule 600(b)(47) of Regulation NMS. *See* Securities Exchange Act Release No. 96494 (December 14, 2022), 87 FR 80266 (December 29, 2022) (''Tick Size Proposal'') at 80315.

[7] *Supra* note 5.

[8] *Id.*

[9] *See* Rule 1.5(e). The BZX Book means the System's electronic file of orders.

[10] *See* Rule 1.5(cc). The term ''User'' shall mean any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.

[11] BZX Post Only Orders in securities priced at or above $1.00 remove contra-side liquidity only if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the BZX Book and subsequently provided liquidity. The Exchange does not propose to change the functionality of BZX Post Only Orders in securities priced at or above $1.00.

[12] The Exchange's economic best interest calculation determines whether the value of price improvement associated with a BZX Post Only Order equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BZX Book and subsequently provided liquidity. The determination of whether a BZX Post Only Order will be allowed to post to the BZX Book or be eligible to remove liquidity is based on the current fee schedule, the execution price, and the amount of price improvement received.

[13] *See* Rule 11.9(c)(11). A ''Non-Displayed Order'' is a market or limit order that is not displayed on the Exchange.

[14] *See* Securities Exchange Act Release No. 64475 (May 12, 2011), 76 FR 28830 (May 18, 2011), SR–BATS–2011–015 (''Resting Order Execution Filing''). The Resting Order Execution Filing introduced an order handling change for certain Non-Displayed Orders and orders subject to display-price sliding that are not executable at prices equal to displayed orders on the opposite side of the market (the ''locking price''). The Resting Order Execution Filing permits Resting Orders priced at or above $1.00 to be executed at one-half minimum price variation less aggressive than the locking price (for bids) and one-half minimum price variation more aggressive than the locking price (for offers), under certain circumstances.

[15] *See* Rule 11.13(a)(4)(D).

[16] *See* Resting Order Execution Filing footnote 8.

[17] *See* Rule 1.5(aa). The term ''System'' shall mean the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranked, executions and, when applicable, routing away.

	Bid		Offer
National best:	$0.50	×	$0.53

- Next, assume the Exchange received an incoming displayed offer (Order 1) to sell 100 shares at $0.50. Order 1 is eligible for display-price sliding pursuant to Rule 11.9(g).[18] Pursuant to Rule 11.9(g), Order 1 is temporarily slid to a displayed price of $0.5001 as it locked the NBB upon entry.[19] Even though Order 1 is now temporarily displayed at a price of $0.5001, Order 1's ranked price remains $0.50, as $0.50 is the locking price.[20]
- Next, assume the Exchange received an incoming BZX Post Only Order bid (Order 2) to buy 100 shares at $0.50. The Exchange's economic best interest calculation determined that it was more beneficial for Order 2 to post to the BZX Book and display at a price of $0.50. BZX Post Only Orders are permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding.[21] The result is depicted as follows:

	Bid		Offer
National best:	$0.50	×	$0.5001
BZX best:	$0.50	×	$0.5001

- The Exchange then receives an IOC[22] order to buy (Order 3) 100 shares at $0.5001. Order 3 executes against Order 1 in its entirety at a price of $0.5001.

Consistent with the Exchange's rule regarding priority of orders, Rule 11.12, a Non-Displayed order cannot be executed by the Exchange pursuant to Rule 11.13 when such order would be executed at the locking price. Specifically, if an incoming, marketable order was allowed to execute against the resting, non-displayed portion of Order 1 at the locking price, such order would receive a priority advantage over Order 2, a resting, displayed order at the locking price. The Resting Order Execution Filing granted the Exchange the ability to execute Non-Displayed Orders and orders subject to NMS Price Sliding[23] priced at or above $1.00 at one-half minimum price variation more (less) than the locking price in the event that a bid (offer) submitted to the Exchange opposite such Resting Order is a market order or limit order priced more aggressive than the locking price.

In the example above, Order 1, ranked at $0.50 upon entry, was slid to a displayed price of $0.5001 pursuant to Rule 11.9(g)(1)(A) as it locked the NBB. Upon the arrival of Order 2, which is a BZX Post Only Order that is permitted to post to the BZX Book and display opposite of Order 1,[24] the Exchange's current priority rule prohibits Order 1 from executing at a price of $0.50 in the event a subsequent contra-side incoming order is entered at a more aggressive price than the locking price. In the example above, Order 3 was entered at a more aggressive price ($0.5001) than the locking price ($0.50). Without the proposed changes to Rule 11.13(a)(4), Order 3 would be cancelled upon entry as it cannot execute at a price of $0.50 due to Order 2's higher priority status.

As discussed above, the Exchange is proposing that a Resting Order priced below $1.00 be permitted to execute at one minimum price variation above the locking price (in the event of a Resting Order offer) or one minimum price variation below the locking price (in the event of a Resting Order bid) in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market or limit order priced more aggressively than the locking price.[25] This behavior is substantially similar to the order handling functionality described in the Resting Order Execution Filing, with one difference being that securities priced below $1.00 will execute at one full minimum price variation above (below) the locking price for offers (bids) rather than one-half minimum price variation above (below) the locking price for offers (bids) in securities priced at or above $1.00. While the example above shows a scenario in which only the Resting Order will receive $0.0001 of price improvement, rather than each side of the transaction as is the case in the scenarios described in the Resting Order Execution Filing, the Exchange notes that if Order 3 in the example above was entered at any price more aggressive than $0.5001, Order 3 would continue to execute against Order 1 at a price of $0.5001 and Order 3 would receive price improvement equal to the difference between its limit price and $0.5001.[26]

The Resting Order Execution Filing specifically introduced order handling behavior that would permit Resting Orders to be executed at one-half minimum price variation above (below) the locking price when an incoming, marketable offer (bid) would otherwise be prevented from executing due to the presence of a BZX Post Only Order in order to optimize available liquidity for incoming orders and to provide price improvement for market participants.[27] This change to order handling behavior was required because, if incoming orders were allowed to execute against Resting Orders at the locking price, such incoming order would receive a priority advantage over the resting, displayed order at the locking price, contrary to the Exchange's priority rule, Rule 11.12.[28] The Exchange recognizes that the order handling behavior for securities priced at or above $1.00 described in the Resting Order Execution Filing results in price improvement for both sides of an affected transaction and the Exchange's proposed order handling change will result in $0.0001 of price improvement only for the Resting Order, however this situation is limited to instances where

[18] *See* Rule 11.9(g)(1)(A). An order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation of an external market will be ranked at the locking price in the BZX Book and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) (''display-price sliding'').

[19] The Exchange notes that the reference to ''temporarily'' is meant to convey that for so long as the NBB is locked, Order 1 will be displayed at a price of $0.5001 pursuant to Rule 11.9(g)(1)(A)(i). In the event that the NBB moves so that Order 1 is no longer locking the NBB, Order 1 will be displayed at the most aggressive permissible price. See also *Rule 11.9(g)(1)(A)(ii).*

[20] *Id.*

[21] *See* Rule 11.9(g)(1)(E).

[22] *See* Rule 11.9(b)(1). An ''IOC'' order is a limit order that is to be executed in whole or in part as soon as such order is received. The portion not executed immediately on the Exchange or another trading center is treated as cancelled and is not posted to the BZX Book.

[23] Orders subject to NMS price sliding (''display-price sliding'') that are temporarily slid to one minimum price variation above (below) the NBO (NBB) will consist of a non-displayed ranked price that is equal to the locking price while simultaneously showing a displayed price that is one minimum price variation above (below) the NBO (NBB). Given that orders subject to display-price sliding contain a non-displayed ranked price in addition to the order's displayed price, the particular priority issue identified in the Resting Order Execution Filing with regard to Non-Displayed Orders is also present when an order subject to display-price sliding is resting on the BZX Book opposite a displayed order.

[24] *Supra* note 18.

[25] *See* 17 CFR 242.612 (''Minimum pricing increment''). Given that the minimum pricing increment for securities priced below $1.00 is $0.0001, the Exchange believes that allowing orders to execute at one minimum price variation above (for offers) or below (for bids) the locking price is appropriate, as requiring executions to occur at one-half minimum price variation above (for offers) or below (for bids) the locking price, which is the current behavior for securities priced at or above $1.00, would result in trades executing out to five decimal places, which is not supported by the System.

[26] For example, if all facts from Example 1 remain the same *except* that Order 3 is an IOC buy order entered with a limit price of $0.5005, then Order 3 will execute against Order 1 at a price of $0.5001 and receive $0.0004 of price improvement.

[27] *See* Resting Order Execution Filing at 28831

[28] *Id.*

the incoming order is entered at a price equal to the displayed price of the Resting Order. While only the Resting Order will receive $0.0001 of price improvement when an incoming order is entered at a price equal to the Resting Order's displayed price, the Exchange believes the incoming order is receiving the benefit of immediate execution rather than cancelling back or posting to the BZX Book (depending on User instruction), which will result in higher overall market quality and likelihood of execution on BZX for Users. In situations where the incoming order is entered at a more aggressive price than the displayed price of the Resting Order, however, each side of the transaction will be receiving at least $0.0001 of price improvement.

Without the proposed order handling change for securities priced below $1.00, a Resting Order may be priced at the very inside of the market at a price below $1.00 but temporarily unable to execute at its full limit price due to the Exchange's priority rule and current order handling procedures. The Exchange notes that by permitting a User's Resting Order to rest at a locking price opposite a displayed order and receive an execution against an incoming order that is priced equal to or more aggressively than the displayed price, the Exchange is incentivizing Users to post aggressively priced liquidity on both sides of the market, rather than discouraging such liquidity by leaving orders unexecuted. In addition, if the BZX Book changes so that such orders are no longer resting or ranked opposite a displayed order, then such orders will again be executable at their full limit price, and in the case of price slid orders, will be displayed at that limit price.

The Exchange is proposing a solution to address specific conditions that are present on the BZX Book when a BZX Post Only Order is displayed opposite the ranked price of orders subject to display-price sliding. The Exchange believes that such specific circumstances, without modification of Rule 11.13(a)(4), would be present upon the expansion of BZX Post Only Order functionality to securities priced below $1.00 and would result in Users receiving fewer executions than the Exchange could otherwise facilitate. The Exchange believes the proposed change to Rule 11.13(a)(4)(D) is substantially similar to the order handling modification proposed and ultimately approved by the Resting Order Execution Filing and does not introduce any novel order handling behavior that has not previously been proposed. While the Exchange is proposing to use a full minimum price variation rather than the one-half minimum price variation currently used for securities priced at or above $1.00 as detailed in the Resting Order Execution Filing, the minimum price variation proposed for securities priced below $1.00 is commensurate with the standard minimum pricing increment for securities priced below $1.00.

The Exchange believes the absence of price improvement for the incoming order is diminished by the incoming order's ability to receive an execution on the Exchange against the Resting Order, rather than receive a cancellation or be posted to the BZX Book (depending on User instruction). Further, the Exchange believes that Users who receive increased execution rates on BZX will be more likely to submit additional order flow to the Exchange. Additional increased order flow benefits all market participants by contributing to a deeper, more liquid market and provides even more execution opportunities for active market participants. Additionally, this difference is necessary due to System limitations that do not support executions out to five decimal places ($0.00001) in securities priced below $1.00, which would occur should the Exchange utilize the same minimum price variation described in the Resting Order Execution Filing. The proposal to amend Rule 11.13(a)(4)(D) is limited to certain circumstances that occur as a result of the presence of a BZX Post Only Order resting opposite a Non-Displayed Order or order subject to display-price sliding and is designed to optimize available liquidity for incoming orders.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[29] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[30] 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)[31] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange is proposing to expand its BZX Post Only Order functionality to securities priced below $1.00. In conjunction with expanding the ability to utilize BZX Post Only Orders at prices below $1.00, the Exchange also proposes that a Resting Order priced below $1.00 be permitted to execute at one minimum price variation above the locking price (in the event of a Resting Order offer) or one minimum price variation below the locking price (in the event of a Resting Order bid) in the event that an order submitted to the Exchange on the side opposite such Resting Order is a market or limit order priced more aggressively than the locking price. This change in order handling behavior is necessary in order to address specific conditions that are present on the BZX Book when a BZX Post Only Order is displayed opposite the ranked price of orders subject to display-price sliding. As discussed below, the Exchange believes its proposal is consistent with Section 6(b)(5) of the Act.

In particular, the proposal to amend Rule 11.9(c)(6) to permit orders priced below $1.00 to utilize BZX Post Only Order functionality promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of a free and open market and a national market system because it will allow Users to enter orders with a BZX Post Only instruction at any price, rather than being limited to securities priced above $1.00. The growth in trading of sub-dollar securities has expanded significantly since 2019 and as such, the Exchange believes that orders at all prices, not only securities priced above $1.00, should be permitted to utilize BZX Post Only Order functionality, which will permit orders to post on the Exchange without removing liquidity or routing to away to another trading center. BZX Post Only Orders allow Users to post aggressively priced liquidity, as such Users have certainty as to the fee or rebate they will receive from the Exchange if their order is executed. Without such ability, the Exchange believes that certain Users would simply post less aggressively priced liquidity, and prices available for

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

[30] 15 U.S.C. 78f(b)(5).

[31] *Id.*

market participants, including retail investors, would deteriorate. Accordingly, the Exchange believes that BZX Post Only Orders enhance the liquidity available to all market participants by allowing market makers and other liquidity providers to add liquidity to the Exchange at or near the inside of the market. Indeed, such market participants have asked the Exchange to implement such functionality in order to permit them to utilize a single trading strategy across securities at all prices. Allowing BZX Post Only Orders to be utilized at prices below $1.00 will deepen the Exchange's pool of available liquidity in sub-dollar securities, which is a growing area of trading, particularly for retail investors. A deeper and more liquid market supports the quality of price discovery, promotes market transparency, and improves market quality for all investors. The Exchange does not believe that the proposed amendment to Rule 11.9(c)(6) is unfairly discriminatory as it will permit the BZX Post Only Order type to be used by all Users at any price and the order type will no longer be limited to securities priced at or above $1.00.

Similarly, the proposal to amend Rule 11.13(a)(4)(D) to allow, under limited circumstances, a Resting Order priced below $1.00 that would otherwise be non-executable due to the presence of a BZX Post Only Order to execute at one minimum price variation above (below) the locking price upon the receipt of an incoming, marketable offer (bid) that would otherwise be prohibited from executing due to the presence of a BZX Post Only Order promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of a free and open market and a national market system because it extends functionality currently available to orders priced at or above $1.00 to orders priced below $1.00, with a slight difference in the minimum price variation to account for the System's inability to display orders out to five decimal places ($0.00001). The proposed amendment to Rule 11.13(a)(4)(D) is substantially similar to the order handling behavior change that was proposed (and later approved) by the Resting Order Execution Filing and will only serve to improve execution quality for participants sending orders to the Exchange.

The Exchange does not believe that the treatment of sub-dollar securities is unfairly discriminatory as the Exchange will be using the standard minimum pricing increment for sub-dollar securities in order to determine the price at which the Resting Order is eligible to execute.[32] While the Exchange recognizes that under its proposal for securities priced below $1.00 results in a limited situation in which only the Resting Order will receive $0.0001 of price improvement (*i.e.,* when an incoming order is entered at the same price as the displayed price of the Resting Order), the Exchange believes the incoming, contra-side order is receiving the benefit of immediate execution rather than cancelling or posting to the BZX Book (depending on User instruction), which will result in higher overall market quality and likelihood of execution on BZX for Users. In situations where the incoming order is entered at a more aggressive price than the displayed price of the Resting Order, however, each side of the transaction will be receiving at least $0.0001 of price improvement, which is substantially similar to how the order handling functionality works for securities priced at or above $1.00. The Exchange believes the proposed change to execute marketable orders that are currently not executed under specific scenarios will help provide price improvement to Resting Orders that, in these limited circumstances, otherwise would not receive an execution even though their order is priced at the inside of the market and would also provide increased execution opportunities to aggressively priced incoming orders rather than requiring these orders to be cancelled or post to the BZX Book. Thus, the Exchange believes that its proposed order handling process in the limited scenario where a Resting Order is ineligible to execute due to the presence of a contra-side BZX Post Only Order will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs.

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 competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to Rule 11.9(c)(6) will apply equally to all Users in that all Users will be eligible to utilize the BZX Post Only Order for securities priced below $1.00. Similarly, the proposed change to Rule 11.13(a)(4)(D) applies equally to all Users in that all Resting Orders will benefit from the proposed order handling behavior change that will execute Resting Orders at one minimum price variation above (below) the locking price upon the receipt of a marketable offer (bid) should a Resting Order be ineligible to execute due to the presence of a contra-side BZX Post Only Order. The proposed changes are designed to expand an existing Exchange order type and existing order handling behavior to securities priced below $1.00 due to the growth in sub-dollar trading that has been seen since 2019. Further, the Exchange does not believe that Users submitting incoming, contra-side orders are burdened by virtue of not receiving price improvement in limited situations as they instead receive the benefit of an immediate execution as opposed to being cancelled back to the User or posting on the BZX Book which results in increased overall market quality and a higher likelihood of execution on BZX.

The Exchange similarly does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange notes that other exchanges already offer the ability to submit an order that is not eligible for routing to away markets and posts to the relevant exchange book at prices below $1.00.[33] The Exchange believes its proposal to expand the use of the BZX Post Only Order to securities priced below $1.00 will promote competition between the Exchange and other exchanges for volume in sub-dollar securities. Furthermore, the Exchange believes its proposal will promote competition between the Exchange and off-exchange trading venues, where a significant amount of sub-dollar trading occurs today.[34] The Exchange similarly believes that its proposal to amend its order handling behavior in limited circumstances where a Resting Order cannot execute due to the presence of a contra-side BZX Post Only Order does not impose a burden on intermarket competition as the change is not designed to address any competitive issue, but rather to address order handling behavior in a substantially similar manner to how the Exchange treats Resting Orders priced at or above $1.00 in the limited scenario where a Resting Order is ineligible to execute against an incoming, marketable order due to the presence of a contra-side BZX Post Only Order.

[32] *Supra* note 25.

[33] *See* Nasdaq Equity 4, Rule 4702(b)(4) (''Post-Only Order''). *See also* NYSE Rule 7.31(e)(2) (''ALO Order'').

[34] *See* ''Off-Exchange Trends: Beyond Sub-dollar Trading'' (May 17, 2023). Available at *https://www.cboe.com/insights/posts/off-exchange-trends-beyond-sub-dollar-trading/.*

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

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 (*https://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2024–006 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–2024–006. 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–2024–006 and should be submitted on or before February 20, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–01618 Filed 1–26–24; 8:45 am]

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[35] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Share Flexibility Pilot Program

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA is announcing a pilot program to enable, on an experimental basis, a State department of transportation (State DOT) to determine the Federal share on a project, multi-project, or program basis for projects under certain specified programs. The Federal Share Flexibility Pilot (Pilot) Program will be carried out until September 30, 2026.

DATES: Applications must be received by March 29, 2024.

ADDRESSES: All application materials should be emailed to *FSPPP@Sharepointmail.dot.gov* or mailed attention to Rhonda Shaffer, Federal Highway Administration, Room E62–332, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Parker, Senior Program Analyst, Office of Financial Management, (801) 955–3518, *Danial.Parker@dot.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at: *www.federalregister.gov/* and the Government Publishing Office's web page at: *www.gpo.gov/fdsys/.*

Background

The Federal-aid highway program is a federally funded, State-administered program, under which State DOTs are responsible for determining which projects are federally funded. Projects are authorized and federally funded up to the maximum Federal share as authorized in statute. Section 11107 of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), amended section 120(l) of title 23, United States Code (U.S.C.) to require the establishment of a Pilot Program not later than 180 days after the date of enactment of the BIL. In accordance with 23 U.S.C. 120(l), selected States in the Pilot Program are allowed to determine the Federal share on an individual project that is more than 0 percent and up to 100 percent as long as the average annual Federal share of all participating projects does not exceed the average of the maximum Federal share of those projects if those projects were not carried out under the Pilot Program. The following guidelines have been established for the Pilot Program:

(a) Up to 10 State DOTs may participate in the Pilot Program.

(b) The Pilot Program will expire on September 30, 2026.

(c) The Federal share will be determined based on the following criteria:

(1) Determined based on project, multiple projects, or program basis.

(2) Maximum Federal share for an individual project under the Pilot Program is 100 percent.

(3) Minimum Federal share for an individual project under the Pilot Program is greater than 0 percent (*i.e.,* any project authorized under the Pilot Program cannot be 0 percent).

(4) The average annual Federal share of the total cost of all projects authorized under this Pilot Program shall not exceed the average of the maximum Federal share of those projects if those projects were not carried out under the Pilot Program.

(d) State DOTs participating in the Pilot Program may determine the Federal share on a project, multiple-project, or program basis for projects under any of the following programs:

(1) National Highway Performance Program (23 U.S.C. 119).