

will benefit competition by enhancing the Exchange's ability to compete by providing additional services to market participants. It is not intended to address a competitive issue. Rather, the proposal is intended to allow the Exchange to increase its inventory of MEI Ports to meet increased Member demand and increased message traffic resulting from greater marketplace volatility. The Exchange also does not believe that the proposed rule change will impose a burden on intramarket competition because additional Limited Service MEI Ports are available to all Market Makers on an equal basis. It is a business decision of each Market Maker whether to pay for the additional Limited Service MEI Ports.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**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)(ii) of the Act,<sup>39</sup> and Rule 19b-4(f)(2)<sup>40</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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](mailto:rule-comments@sec.gov). Please include File Number SR-MIAX-2021-19 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-MIAX-2021-19. 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-MIAX-2021-19 and should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>41</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91863; File No. SR-NYSE-2021-13]

**Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Continue Offering Certain Connectivity Services That Have Been Suspended by the Securities and Exchange Commission**

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 7, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to continue offering certain connectivity services that have been suspended by the Securities and Exchange Commission ("Commission") at no charge, for a period of 14 days, in order to provide affected Users time to acquire substitute services before their connectivity is terminated. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

<sup>39</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>40</sup> 17 CFR 240.19b-4(f)(2).

<sup>41</sup> 17 CFR 200.30-3(a)(12).

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

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to continue offering certain connectivity services that have been suspended by the Commission at no charge, for a period of 14 days, in order to provide affected Users<sup>3</sup> time to acquire substitute services before their connectivity is terminated.

As background, on March 10, 2021, the Exchange filed with the Commission a proposed rule change for immediate effectiveness (the "Filing") that amended the colocation services offered by the Exchange to provide Users the option to access to the systems and data feeds of various additional third parties.<sup>4</sup> The proposed rule change became operative on April 9, 2021. Since then, five Users have contracted to receive the services that were added in the Filing.

On May 7, 2021, the Commission suspended the Filing and instituted proceedings to determine whether the proposed rule change should be approved or disapproved.<sup>5</sup> Such action suspended the Exchange's ability to offer access to Third Party Systems from Long Term Stock Exchange, Members Exchange, MIAX Emerald, MIAX PEARL Equities, Morgan Stanley, and TD Ameritrade, and to offer connectivity to Third Party Data Feeds from ICE Data Services—ICE TMC, Members Exchange, MIAX Emerald, and MIAX PEARL Equities (together, the "Suspended Services").

The Commission's suspension of such services is likely to cause disruption to the current Users of such services, who

<sup>3</sup> For purposes of the Exchange's colocation services, a "User" means any market participant that requests to receive colocation services directly from the Exchange. See Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR-NYSE-NAT-2018-07). As specified in the Exchange's Schedule of Fees and Rebates ("Fee Schedule"), a User that incurs colocation fees for a particular colocation service pursuant thereto would not be subject to colocation fees for the same colocation service charged by the Exchange's affiliates New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE Chicago, Inc. (together, the "Affiliate SROs"). See *id.* at 26314 n.11. Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2021-31, SR-NYSEAMER-2021-26, SR-NYSEARCA-2021-38, and SR-NYSECHX-2021-10.

<sup>4</sup> See Securities Exchange Act Release No. 91389 (March 23, 2021), 86 FR 16403 (March 29, 2021) (SR-NYSE-NAT-2021-05).

<sup>5</sup> See Securities Exchange Act Release No. 91790 (May 7, 2021) (SR-NYSE-2021-15, SR-NYSEAMER-2021-13, SR-NYSEARCA-2021-15, SR-NYSECHX-2021-04, SR-NYSE-NAT-2021-05).

must now acquire substitutes for the Suspended Services. As an accommodation to such current Users, the Exchange now proposes to provide the Suspended Services to all Users, at no charge, for a period of 14 days from the date of filing ("Transition Period"), to enable current Users to maintain their connectivity while establishing alternate connectivity.

Specifically, the Exchange proposes to amend its Fee Schedule relating to colocation to provide:

Connectivity to Suspended Third Party Systems and Suspended Third Party Data Feeds

Connectivity to the Third Party Systems and Third Party Data Feeds listed below ("Suspended Services") is available until May 24, 2021 ("Transition Period"). During the Transition Period, the Exchange will not charge any fees for the Suspended Services. At the conclusion of the Transition Period, any remaining customers of Suspended Services will have their Suspended Services terminated.

*Suspended Third Party Systems:*

Long Term Stock Exchange (LTSE)  
Members Exchange (MEMX)  
MIAX Emerald  
MIAX PEARL Equities  
Morgan Stanley  
TD Ameritrade

*Suspended Third Party Data Feeds:*

ICE Data Services—ICE TMC  
Members Exchange (MEMX)  
MIAX Emerald  
MIAX PEARL Equities

Application and Impact of the Proposed Changes

The proposed rule change would apply to all Users, each of which would be eligible to receive the Suspended Services, at no charge, for a period of up to 14 days.

Competitive Environment

The proposed changes are not intended to address any other issues relating to colocation services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, because it is 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 and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system, and would further the protection of investors and the public interest. Without the proposed rule change, the Suspended Services would be terminated immediately, leaving the current Users without access and connectivity to the Suspended Services. As a result, the Commission's suspension of the services at issue is likely to cause disruption to the current Users of the Suspended Services, who must now acquire substitute services. The Exchange's proposal to provide the Suspended Services, at no charge, to all Users during the Transition Period would give such current Users an opportunity to transition to substitute services without a gap in their service, which would mitigate the disruption and lessen the burden on such current Users.

Further, the Exchange believes that providing a 14-day Transition Period would remove impediments to and perfect the mechanism of a free and open market and a national market system and would protect investors and the public interest. Current Users that wish to replace the Suspended Services will have to investigate their other options, negotiate new terms, and establish and test their new connections. The proposed Transition Period gives current Users time to complete all the steps required to make the transition without having a gap in their connectivity to the Suspended Services.

The Exchange believes that its proposed rule change would perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because it would highlight that the Suspended Services are only available during the Transition Period, that no fee will be charged for the Suspended Services during the Transition Period. At the end of the Transition Period, all Users will have their Suspended Services terminated. It would thereby reduce any potential

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

ambiguity and provide current Users and other market participants with clarity concerning the terms and period of availability of the Suspended Services.

In addition, the Exchange believes that the proposed rule change would promote just and equitable principles of trade. In light of the Commission's suspension, the current Users of the affected services are faced with an unexpected, immediate disruption of their connectivity, while market participants that opted to obtain similar connectivity from alternate providers are not. The Exchange's proposal to allow all Users to receive the Suspended Services at no charge during the Transition Period would help equalize the treatment of these two groups of market participants by providing the same 14 day prospective period to both groups and giving current Users time to make the transition without having a gap in their connectivity to the third party systems and data feeds at issue.

Finally, the proposed rule change is not designed to permit unfair discrimination between market participants. The proposed rule change would apply equally to all Users. All Users would be entitled to receive the Suspended Services at no charge during the Transition Period. At the conclusion of the Transition Period, any remaining customers of Suspended Services would have their Suspended Services terminated.

For all these reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>8</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange believes that the proposed rule change would not place any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to give current Users time to make a fair and orderly transition to substitute services without the disruptions to their operations and, potentially, to the markets that would be caused by an immediate termination of the Suspended Services.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>11</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>12</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the 14 day period to take effect immediately. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of such 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

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>14</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2021-13 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-NYSENAT-2021-13. 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-NYSENAT-2021-13, and

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>8</sup> 15 U.S.C. 78f(b)(8).

should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2021-10385 Filed 5-17-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91875; File No. SR-CboeBZX-2021-036]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Exclude a National Best Bid or Offer From the Calculation of the BZX Official Closing Price, as Provided in Rule 11.23(c)(2)(B)(ii)(b), That Is Outside the Bands Provided Under the Plan To Address Extraordinary Market Volatility

May 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 29, 2021, 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to exclude an National Best Bid or Offer<sup>3</sup> (“NBBO”) from the calculation of the BZX Official Closing Price, as provided in Rule 11.23(c)(2)(B)(ii)(b), that is outside the bands provided under the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down” or “LULD” Plan).<sup>4</sup> The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s

website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### 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 BZX Rule 11.23, Auctions, to modify how the BZX Official Closing Price, which is the price disseminated to the consolidated tape as the market center closing trade,<sup>5</sup> would be determined for any BZX-listed security that is not a corporate security (*i.e.*, an Exchange-Traded Product (“ETP”) as provided in Exchange Rule 14.11, also referred to as a “Derivative Securities Product”) when the time-weighted average price of the NBBO midpoint is used to calculate the BZX Official Closing Price, as set forth in Rule 11.23(c)(2)(B)(ii)(b). This provision of Rule 11.23(c)(2)(B)(ii)(b) is only used to determine the BZX Official Closing Price and does not impact any executions in the Closing Auction. Such provision also only applies where there is less than one round lot executed in the Closing Auction and where there has not been a trade that would qualify as a Final Last Sale Eligible Trade within the final five minutes before the end of Regular Trading Hours. The Exchange is proposing instead to exclude from this midpoint calculation under Rule 11.23(c)(2)(B)(ii)(b) any NBBO when either the NBB is lower than the Lower Price Band or the NBO is higher than the Upper Price Band, as further described below. Excluding such NBBOs from the calculation will ensure that only those quotes in which both the NBB and NBO are actually executable will be included in determining the BZX Official Closing Price.

Rule 11.23(c)(2)(B)(i) through (iii) sets forth how the BZX Official Closing Price for Derivative Securities Products is determined. Paragraph (B)(i) provides that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price. Paragraph (B)(ii) provides that in the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i), the BZX Official Closing Price for such security will depend on when the last consolidated last-sale trade occurs. Specifically, if a trade that would qualify as a Final Last Sale Eligible Trade<sup>6</sup> occurred (a) within the final five minutes before the end of Regular Trading Hours,<sup>7</sup> the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing Price. Paragraph (B)(iii) provides that if the BZX Official Closing Price cannot be determined under paragraphs (B)(i) or (B)(ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

The Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) in order to change how the BZX Official Closing Price is calculated using the time-weighted average price of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours. Under current functionality, the Exchange uses all NBBO quotes during the last five minutes of Regular Trading Hours to determine the BZX Official Closing Price under Rule 11.23(c)(2)(B)(ii)(b). Certain market conditions may result in setting a BZX Official Closing Price that is not necessarily reflective of a Derivative Securities Product’s reasonable market value. For example, if during a particular period of time in the last five minutes of Regular Trading Hours, a Derivative Securities Product has an NBO that is reasonably reflective

<sup>6</sup> The term “Final Last Sale Eligible Trade” shall mean the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last round lot trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used. See BZX Rule 11.23(a)(9).

<sup>7</sup> The term “Regular Trading Hours” means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See BZX Rule 1.5(w).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See BZX Rule 1.5(o).

<sup>4</sup> See Securities Exchange Act No. 88704 (April 21, 2020) 85 FR 23383 (April 27, 2020) (File No. 4-634) (Amendment No. 20 Approval Order).

<sup>5</sup> See Exchange Rule 11.23(a)(3).