

in general, and furthers the objectives of Section 6(b)(4) of the Act¹² in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act¹³ in that it is designed to promote just and equitable principles of trade, 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 is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing Priority Customer Orders to away markets on behalf of Members and does so in the same manner for all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to the Nasdaq MRX options exchange. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding 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 not

necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq MRX. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.¹⁴

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,¹⁵ and Rule 19b-4(f)(2)¹⁶ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-PEARL-2023-30 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-PEARL-2023-30. 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-PEARL-2023-30 and should be submitted on or before August 9, 2023.

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

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-15264 Filed 7-18-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97902; File No. SR-CBOE-2023-033]

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

July 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See *supra* note 4.

¹⁵ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁶ 17 CFR 240.19b-4(f)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

(“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on June 30, 2023, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”), 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fees 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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 Fees Schedule, effective July 3, 2023.

XSP Fees

The Exchange first proposes to adopt and amend certain fees related to transactions in Mini-SPX Index (“XSP”) options. Specifically, the proposed rule changes amends and adopts certain fees for XSP in the Rate Table for All Products Underlying Symbol List A, as follows:

- Amends fee code XC, appended to all Customer (capacity “C”) orders in XSP that are for less than 10 contracts and assesses no charge, to provide a rebate of \$0.13 per contract.³
- Amends fee code CC, appended to all Customer (capacity “C”) orders in XSP that are for greater than or equal to 10 contracts and assesses a fee of \$0.04 per contract, to assess a fee of \$0.07 per contract.
- Adopts fee code MC, appended to all Market-Maker (capacity “M”) orders in XSP that are contra customer and assesses a fee of \$0.15 per contract.
- Amends fee code MX, currently appended to all Market-Maker (capacity “M”) orders in XSP and assesses a fee of \$0.045, to apply to orders contra to non-customers and to assess a fee of \$0.09 per contract.
- Amends fee code XF, appended to all Clearing Trading Permit Holders (“TPHs”) (capacity “F”) and Non-Clearing TPH Affiliates (capacity “L”) (collectively, “Firms”) orders in XSP and assesses a fee of \$0.06, to assess a fee of \$0.13 per contract.
- Amends fee code XB, appended to all Broker-Dealer (capacity “B”), Joint Back-Office (capacity “J”), Non-TPH Market-Maker (capacity “N”), and Professional (capacity “U”) (collectively, “Non-Customers”) orders in XSP and assesses a fee of \$0.08 per contract, to assess a fee of \$0.17 per contract.

Customer Volume Incentive Program

The Exchange proposes to amend the Customer Volume Incentive Program (“VIP”). The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 17% of the market share.⁴ Thus, in such a low-concentrated and highly competitive market, no single options exchange possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month

demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange’s transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to the competitive environment, the Exchange offers tiered pricing in its Fees Schedule, like that of other options exchanges fees schedules,⁵ which provides TPHs opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for TPHs to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, under the VIP, the Exchange credits each TPH the per contract amount set forth in the VIP table for Public Customer (origin code “C”) orders transmitted by TPHs (with certain exceptions)⁶ and executed electronically on the Exchange, provided the TPH meets certain volume thresholds in a month; volume for Professional Customers and Voluntary Professionals (“Professional Customers”) (origin code “W”), Broker-Dealers (origin code “B”), and Joint Back-Offices (“JBO”) (origin code “J”) orders are counted toward reaching such thresholds.⁷

The VIP offers both rates for Complex and Simple orders. The VIP provides however, that a TPH will only receive the Complex credit rates for both its Complex AIM and Non-AIM volume if at least 38% of that TPH’s qualifying VIP volume (in both AIM and Non-AIM) in the previous month was comprised of Simple volume. If the TPH’s previous month’s volume does not meet the 38% Simple volume threshold, then the TPH’s Customer (C) Complex volume will receive credits at the Simple rate only (*i.e.*, all volume, both Simple and Complex, will receive credits at the applicable Simple rate). The Exchange proposes to reduce the 38% threshold to 32%, for Tiers 1, 2, and 3 (the 38% threshold will continue to apply to Tiers 4 and 5). The proposed change is designed to increase the amount of volume TPHs provide on the Exchange

³ The Exchange also proposes to update corresponding Footnote 9 to reflect Customer orders in XSP for less than 10 contracts will receive a rebate (instead of no charge).

⁴ See Cboe Global Markets U.S. Options Market Volume Summary (June 28, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

⁵ See *e.g.*, NASDAQ Stock Market Rules, Options Rules, Options 7 Pricing Schedule, Sec. 2 Options Market—Fees and Rebates, Tiers 1–6; see also NYSE Arca Options, Fees and Charges, Customer Posting Credit Tiers in Non-Penny Issues.

⁶ See Cboe Options Fees Schedule, Footnote 36.

⁷ See Cboe Options Fees Schedule, Volume Incentive Program.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

and further encourage them to contribute to a deeper, more liquid market, as well as to increase transactions and take such execution opportunities provided by such increased liquidity, while implementing an incremental incentive for TPHs to strive for the highest level. The Exchange believes the proposed change will still encourage TPHs to continue to send both Simple and Complex volume to the Exchange.

Further, the Exchange proposes to increase the VIP credit rates for complex orders in Tier 3 from \$0.24 to \$0.23 per contract for non-AIM volume and from \$0.22 to \$0.21 per contract for AIM volume.

MRUT LMM Incentive Program

Finally, the Exchange proposes to amend its Mini-Russell 2000 Index option (“MRUT”) Lead Market-Maker (“LMM”) Incentive Program. The Exchange offers several LMM Incentive Programs which provide a rebate to TPHs with LMM appointments to the respective incentive program that meet certain quoting standards in the applicable series in a month. The Exchange notes that meeting or exceeding the quoting standards (both current and as proposed; described in further detail below) in each of the LMM Incentive Program products to receive the applicable rebate (both currently offered and as proposed; described in further detail below) is optional for an LMM appointed to a program. Particularly, an LMM appointed to an incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards, which the Exchange believes encourages appointed LMMs to provide liquidity in the applicable class and trading session (*i.e.*, Regular Trading Hours (“RTH”) or Global Trading Hours). The Exchange may consider other exceptions to the programs’ quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to an incentive program meets the applicable program’s quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of the applicable series.

The Exchange proposes to amend the current MRUT LMM Incentive Program. Currently, the MRUT LMM Incentive Program provides that, for MRUT, if the appointed LMM provides continuous electronic quotes during RTH that meet or exceed the heightened quoting

standards in at least 99% of the MRUT series 90% of the time in a given month, the LMM will receive a rebate for that month in the amount of \$15,000 (or prorated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month). The Exchange now proposes to amend the series qualification requirement for the MRUT LMM Incentive Program. Specifically, the Exchange proposes to update the series qualification requirement to require the appointed LMM to provide continuous electronic quotes during RTH that meet or exceed the heightened quoting standards in at least 97% the MRUT series 90% of the time in a given month in order to receive the rebate, thereby decreasing the series qualification requirement by 2%. In changing this requirement, the Exchange wishes to encourage LMMs appointed to the MRUT LMM Incentive Program to provide significant liquidity in MRUT options by meeting the series qualification requirements (and relevant quoting standards) under the Program in order to receive the rebate.

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.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ 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)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹¹ which requires that Exchange rules provide for

the equitable allocation of reasonable dues, fees, and other charges among its TPHs and other persons using its facilities.

The Exchange believes that the proposed fees for Customer, Market-Maker, Firm and Non-Customer orders in XSP are reasonable, equitable and not unfairly discriminatory. The Exchange notes that the proposed transactions fees for Customer orders in XSP that are for more than 10 contracts, as well as for Market-Maker, Firm and Non-Customer orders in XSP, remain lower than that of the similar market participant fees associated with other index products.¹² Further, the Exchange believes that it is equitable and not unfairly discriminatory to provide a rebate of \$0.13 for all Customer orders in XSP that are for less than 10 contracts, as such rebate is designed to incentivize Customer volume in XSP on the Exchange. Additionally, the Exchange believes it is equitable and not unfairly discriminatory to establish a fee structure for Market-Maker orders in XSP, based on contra-party, and to adopt a new fee code specific to Market-Maker orders in XSP that are contra customer, as such changes are also designed to incentivize an increase in Customer volume in XSP on the Exchange. The Exchange believes that incentivizing more Customer orders in XSP will create more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity facilitates tighter spreads, which may lead to additional increase of order flow in XSP from other market participants, further contributing to a deeper, more liquid market to the benefit of all market participants by creating a more robust and well-balanced market ecosystem. Further, the Exchange believes that the changes are reasonable and that the fees, even as amended, will continue to incentivize Members to send additional Market-Maker orders to the Exchange.

The Exchange believes that the proposed fees for Customer, Market-Maker, Firm and Non-Customer orders in XSP are equitable and not unfairly discriminatory because the proposed fees will apply automatically and uniformly to all Customer, Market-Maker, Firm and Non-Customer orders in XSP.

The Exchange believes the proposed amendment to the VIP, to decrease the percentage of TPH qualifying VIP volume (in both AIM and Non-AIM) that must be comprised of Simple volume in

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ *Id.*

¹¹ 15 U.S.C. 78f(b)(4).

¹² See Cboe Options Fee Schedule, “Index Options Rate Table—All Index Products Excluding Underlying Symbol List A and Sector Indexes”.

order to receive the complex rates for both Complex AIM and Non-AIM volume for Tiers 1 through 3, is reasonable because it makes it slightly easier for TPHs to meet the qualifying criteria to receive the Complex credits in Tiers 1 through 3. The Exchange notes that the VIP will continue to provide an incremental incentive for TPHs to strive for the highest tier level, which provides increasingly higher credits, for both Complex and Simple volume. The Exchange believes the proposed change is equitable and not unfairly discriminatory because the proposed changes apply to all TPHs uniformly.

Further, the Exchange believes that decreasing the VIP credit rates for complex orders in Tier 3 is reasonable because it will still allow all TPHs transmitting public customer complex orders that reach the Tier 3 volume thresholds to receive a credit for doing so (albeit at slightly lower amounts). The proposed complex credit rates for Tier 3 also do not represent a significant departure from the credit rates offered under the existing Tier 3 and are therefore still reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed credit rates, along with the existing threshold, appropriately reflect the incremental difficulty to achieve VIP Tier 3.

The Exchange believes that the proposed changes to the VIP are reasonable, equitable and not unfairly discriminatory, as such changes should continue to incentivize the sending of more complex orders to the Exchange. This should provide greater liquidity and trading opportunities, including for market participants who send simple orders to the Exchange (as simple orders can trade with the legs of complex orders). The greater liquidity and trading opportunities should benefit not just public customers (whose orders are the only ones that qualify for the VIP) but all market participants.

The Exchange believes that the proposal represents an equitable allocation of rebates and is not unfairly discriminatory because all TPHs have the opportunity to meet the proposed Simple volume thresholds in Tiers 1 through 3, to receive the complex rates for both Complex AIM and Non-AIM volume for Tiers 1 through 3. Given that TPHs change their trading strategies and patterns month-to-month to align with changing market trends and conditions, as well as pricing and functionality changes across other exchanges, and 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 definitively result in a shift of TPHs qualifying for the proposed tiers. While the Exchange has no way of predicting with certainty how the rule change will impact TPHs, the Exchange anticipates the impact of the proposed change to be minimal in at least one TPH will be able to reach Tier 2, as amended, and two TPHs will be able to reach Tier 3, as amended. As stated, the Exchange believes that the proposed changes do not represent a significant departure from the current required criteria, is still reasonable based on the difficulty of satisfying each tier's criteria, and is appropriately aligned with the incremental difficulty to achieve the existing VIP tiers. As such, the Exchange does not anticipate the proposed change to impact the number of firms that compete across all tiers, but instead encourages competition by encouraging an increase in order flow in order to qualify for contract credits. Therefore, the Exchange does not believe that the proposed changes are unfairly discriminatory as it would not impact the range of typical competition across such tiers.

The Exchange believes it is reasonable to decrease the series requirement for the MRUT LMM Incentive Program to 97% (from 99%), as such changes are reasonably designed to slightly ease the difficulty in meeting the heightened quoting standards offered under these programs (for which an appointed LMM receives the respective rebates), which, in turn, provides increased incentive for LMMs appointed to these programs to provide significant liquidity in MRUT options. Such liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange believes that the proposed changes to the LMM Incentive Program is equitable and not unfairly discriminatory. The Exchange believes that it is equitable and not unfairly discriminatory to amend the series qualification requirement for the MRUT LMM Incentive Program, because such series qualification requirement will equally apply to any and all TPHs with LMM appointments to the MRUT LMM Incentive Program that seek to meet the program's heightened quoting standard in order to receive the rebate offered under the program. The Exchange additionally notes that, if an LMM appointed to the LMM Incentive Program does not satisfy the corresponding heightened quoting standard for any given month, then it

simply will not receive the rebate offered by the respective program for that month.

Regarding the MRUT LMM Incentive Program generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to continue to offer these financial incentives, including as amended, to LMMs appointed to the program, because it benefits all market participants trading in MRUT options during RTH. This incentive program encourages the LMMs appointed to such program to satisfy the heightened quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade MRUT options, as applicable, which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM Incentive Program, as amended, to sufficiently incentivize LMMs appointed to the incentive program to provide key liquidity and active markets in the corresponding program products during the corresponding trading sessions, and believes that these incentive program, as amended, will continue to encourage increased quoting to add liquidity in MRUT, thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month to satisfy that heightened quoting standards (*e.g.*, having to purchase additional logical connectivity).

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. 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 amendments to XSP fees will apply to all similarly situated TPHs equally, the VIP will apply to all TPHs submitting qualified orders equally, and the amendments to the MRUT LMM Incentive Program will apply uniformly to any LMM appointment to the programs.

The Exchange believes that providing a rebate of \$0.13 for Customer orders in XSP that are for less than 10 contracts will incentivize Customer volume in XSP on the Exchange. Further, the

proposed change to establish a fee structure for Market-Maker orders in XSP, based on contra-party, and adopt a new fee code specific to Market-Maker orders in XSP that are contra customer, is designed to incentivize an increase in Customer volume in XSP on the Exchange. As noted above, Customer order flow, importantly, provides increased trading opportunities signaling additional liquidity and ultimately enhancing overall market quality. Further, preferential pricing to Customers is a long-standing options industry practice.¹³

As discussed above, the Exchange believes the proposed VIP changes would continue to incentivize the sending of more complex orders to the Exchange, which in turn would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all TPHs. The Exchange believes the proposed change to decrease the percentage of TPH qualifying VIP volume (in both AIM and Non-AIM) that must be comprised of Simple volume in order to receive the complex rates for both Complex AIM and Non-AIM volume for Tiers 1 through 3 will continue to provide an incremental incentive for TPHs to strive for the highest tier level, which provides increasingly higher credits, for both Complex and Simple volume, thus incentivizing order flow to the Exchange. Further, the Exchange believes the change to decrease the VIP credit rates for complex orders in Tier 3 remain in line to the amounts of credits paid to market participants by another exchange for similar transactions and do not represent a significant departure from the credit rates offered under the existing Tier 3.

Finally, in regard to the MRUT LMM Incentive Program, to the extent LMMs appointed to this program receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. An LMM appointed to an incentive program may also undertake added costs each month to satisfy that heightened quoting standards (e.g., having to purchase additional logical connectivity). The

Exchange also notes that the proposed changes are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

As a result of the above, the Exchange believes that the proposed changes furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁴

The Exchange 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. The Exchange notes that it operates in a highly competitive market. TPHs have numerous alternative venues that they may participate on and direct their order flow, including 16 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 17% of the market share.¹⁵ Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange, and, additionally 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."¹⁶ 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'. . . ."¹⁷ 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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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-CBOE-2023-033 on the subject line.

¹³ See e.g., NYSE American Options Fee Schedule, Section I.A, Options Transaction Fees and Credits: Rates for Options transactions; and MIAX Options Fee Schedule, Section (b)(1), Proprietary Products Exchange Fees: SPIKES, each of which assesses a lower transaction fee for customer orders than that of other market participants.

¹⁴ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

¹⁵ See supra note 4.

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

¹⁷ *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)).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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-2023-033. 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 offices 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-2023-033, and should be submitted on or before August 9, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁰

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023-15270 Filed 7-18-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97903; File No. SR-CboeBZX-2023-040]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change, As Modified by Amendment No. 1, To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

July 13, 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 June 30, 2023, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to list and trade shares of the VanEck Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. On July 11, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The proposed rule change, as modified by Amendment No. 1, is 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, as modified by Amendment No. 1, from interested persons.

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

Cboe BZX Exchange, Inc. ("BZX" or the "Exchange") is filing with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to list and trade shares of the VanEck Bitcoin Trust (the "Trust"),³ under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Trust was formed as a Delaware statutory trust on December 17, 2020 and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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

This Amendment No. 1 to SR-CboeBZX-2023-040 amends and replaces in its entirety the proposal as originally submitted on June 30, 2023. The Exchange submits this Amendment No. 1 in order to clarify certain points and add additional details to the proposal.

The Exchange proposes to list and trade the Shares under BZX Rule 14.11(e)(4),⁴ which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.⁵ VanEck Digital Assets, LLC is the sponsor of the Trust ("Sponsor").⁶ The Shares will be registered with the Commission by means of the Trust's registration statement on Form S-1 (the "Registration Statement").⁷ A third-

⁴ The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR-BATS-2011-018).

⁵ All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange.

⁶ The Exchange notes that two other proposals to list and trade shares of the Trust were previously disapproved pursuant to delegated authority, one of which is currently pending Commission Review pursuant to Rule 431 of the Commission's Rules of Practice, 17 CFR 201.431. See Securities Exchange Act Release Nos. 93559 (November 12, 2021) (SR-CboeBZX-2021-019), 86 FR 64539 (November 18, 2021); 95978 (October 4, 2022) 87 FR 61418 (October 11, 2022) (SR-CboeBZX-2022-035). See also Letter from Assistant Secretary J. Matthew DeLesDernier to Kyle Murray, Assistant General Counsel, Cboe Global Markets, dated November 12, 2021.

⁷ See Amendment No. 2 to Registration Statement on Form S-1, dated June 22, 2022, submitted to the Commission by the Sponsor on behalf of the Trust (333-251808). The descriptions of the Trust, the Shares, and the Benchmark contained herein are based, in part, on information in the Registration Statement. The Registration Statement is not yet

²⁰ 17 CFR 200.30-3(a)(12).