

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-CboeEDGX-2023-052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2023-052. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeEDGX-2023-052 and should be submitted on or before September 8, 2023.

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

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-17755 Filed 8-17-23; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98126; File No. SR-CboeBZX-2023-056]

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

August 14, 2023.

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 August 1, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (http://markets.cboe.com/us/options/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

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).

²⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to amend its Fee Schedule, effective August 1, 2023.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 16% of the market share.³ Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow or discontinue to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. In response to competitive pricing, the Exchange, like other options exchanges, offers rebates and assesses fees for certain order types executed on or routed through the Exchange.

The Exchange's fee schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides a rebate of \$0.29 per contract for Market Maker orders that add liquidity in Penny Securities, yielding fee code PM. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria. For

³ See Cboe Global Markets U.S. Options Monthly Market Volume Summary (July 26, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

example, the Exchange currently offers four Market Maker Penny Add Volume Tiers ("MM Penny Add Tier") under footnote 6 of the Fee Schedule which provide rebates between \$0.31 and \$0.43 per contract for qualifying Market Maker orders which meet certain add liquidity thresholds and yield fee code PM.

The Exchange proposes to adopt a new MM Penny Add Tier, specifically a Market Maker Cross-Asset Add Tier, which requires participation on the Exchange's equity options platform ("BZX Equities").⁴ Under the proposed tier, the Exchange would provide a rebate of \$0.38 per contract where a Member (1) has an ADAV⁵ in Market Maker orders greater than or equal to 0.05% of average OCV;⁶ (2) has on BZX Equities an ADAV greater than or equal to 0.35% of average TCV;⁷ and (3) is the Lead Market Maker ("LMM")⁸ on BZX Equities in at least 50 equity symbols.

The Exchange believes the proposed tier, along with the existing tiers, continues to provide an incremental incentive for Members to strive for the highest tier levels, which provide increasingly higher rebates for such transactions. The proposed thresholds include a threshold relating to ADAV in Market Maker orders and cross-asset thresholds, which are designed to incentivize Members to achieve certain levels of participation on both the Exchange's options and equities platforms. Overall, the proposed enhanced rebate and corresponding criteria is designed to encourage Members to increase their order flow, thereby contributing to a deeper and more liquid market, which benefits all market participants and provides greater execution opportunities on the Exchange.

Additionally, the Exchange proposes to modify fees associated with certain routing fee codes. The Exchange assesses fees in connection with orders

⁴ The Exchange proposes to add this Tier as described in the table in Footnote 6 and to the amounts of the rebates in the Standard Rates table.

⁵ "ADAV" means average daily added volume calculated as the number of contracts added.

⁶ "OCV" means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation ("OCC") for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

⁷ "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

⁸ "Lead Market Maker" means a Market Maker registered with the Exchange for a particular LMM Security that has committed to maintain Minimum Performance Standards in the LMM Security. See Rule 11.8(e).

routed away to various exchanges. The Fee Schedule currently lists fee codes and their corresponding transaction fee for certain Customer orders routed to other options exchanges. Currently, under the Fee Codes and Associated Fees section of the Fee Schedule, fee code RP is appended to routed Customer orders to NYSE American ("AMEX"), BOX Options Exchange ("BOX"), Nasdaq BX Options ("BX"), Cboe Exchange, Inc. ("Cboe"), Cboe EDGX Exchange, Inc. ("EDGX"), ISE Mercury, LLC ("ISE Mercury" or "MERC"), MIAX Options Exchange ("MIAX") or Nasdaq PHLX LLC ("PHLX") (excluding orders in SPY options) and assesses a charge of \$0.25 per contract; fee code RQ is appended to routed Customer orders in Penny Program classes to NYSE Arca ("ARCA"), Cboe C2 Exchange, Inc. ("C2"), Nasdaq ISE ("ISE"), ISE Gemini, LLC ("ISE Gemini"), MIAX Emerald Exchange ("MIAX Emerald"), MIAX Pearl Exchange ("MIAX Pearl"), Nasdaq Options Market LLC ("NOM") or PHLX (including orders in SPY options) and assesses a charge of \$0.85 per contract; and fee code RR is appended to routed Customer orders in Non-Penny classes to ARCA, C2, ISE, ISE Gemini, MIAX Emerald, MIAX Pearl or NOM and assesses a charge of \$1.25.

The Exchange notes that its current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in a rough approximation of overall Routing Costs, and are not significantly higher or lower in any area. The Exchange notes that other options exchanges currently assess routing fees in a similar manner as the Exchange's current approach to assessing approximate routing fees.⁹

The Exchange proposes to amend fee code RP to exclude applicable Customer orders routed to ISE Mercury, LLC (*i.e.*, MERC)¹⁰ and to amend fee codes RQ and RR to add applicable Customer

⁹ See *e.g.*, MIAX Options Exchange Fee Schedule, Section 1(c), "Fees for Customer Orders Routed to Another Options Exchange."

¹⁰ The Exchange proposes non-substantive changes to fee code RP to rename "BX Options" to "BX" and "EDGX Options" to "EDGX."

orders routed to MERC.¹¹ The Exchange further proposes to amend fee codes RQ and RR to add applicable Customer orders routed to MEMX LLC (“MEMX”), in anticipation of the launch of the new options exchange. The charges assessed per contract for each fee code remain the same under the proposed rule change.

The proposed changes result in an assessment of fees that, following fee changes by an away options exchange and in anticipation of the launch of another options exchange, is more in line with the Exchange’s current approach to routing fees, that is, in a manner that approximates the cost of routing Customer orders to other away options exchanges, based on the general cost of transaction fees assessed by the sub-category of away options exchanges for such orders (as well as the Exchange’s Routing Costs).¹² The Exchange notes that routing through the Exchange is optional and that TPHs will continue to be able to choose where to route applicable Customer 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.¹³ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁴ 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)¹⁵ 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,¹⁶ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed Market Maker Penny Add Volume Tier is reasonable because it provides additional opportunities for Members to receive a rebate by providing alternative criteria for which they can reach. The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,¹⁷ including the Exchange,¹⁸ and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange’s market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Additionally, as noted above, the Exchange operates in a highly competitive market. The Exchange is only one of several options venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing options exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon Members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides.

Moreover, the Exchange believes the proposed MM Penny Add Tier is a reasonable means to encourage Members to increase their liquidity on the Exchange and also their participation on BZX Equities. The Exchange believes that adopting tiers with alternative criteria to the existing Market Maker Volume Tiers may encourage those Members who could not previously achieve the criteria under existing Market Maker Volume Tiers 1 through 4 to increase their order flow on BZX Options and Equities.

For example, the proposed tiers would provide an opportunity for Members who have an ADAV in Market Makers Orders of at least 0.05% of average OCV, but less than the more stringent 0.15% of average OCV (the requirement under current Tier 1), to receive a higher rebate than they may currently receive but equal or slightly lower than the rebate they would receive for reaching the more stringent criteria under current Tiers 2 through 4, if they also meet the threshold requirements based on BZX Equities participation. Similarly, for Market Makers that participate on both BZX Options and Equities, and do not currently meet the 0.15% ADAV threshold under current Tier 1, but can or do meet the proposed equities thresholds, the proposed tier may incentivize those participants to grow their options volume in order to receive enhanced rebates. Increased liquidity benefits all investors by deepening the Exchange’s liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes that proposed enhanced rebates are reasonable based on the difficulty of satisfying the tiers’ criteria and ensures the proposed rebates and thresholds appropriately reflect the incremental difficulty to achieve the existing MM Penny Add Tiers. The proposed enhanced rebate amounts also do not represent a significant departure from the enhanced rebates currently offered under the Exchange’s existing MM Penny Add Tiers. Indeed, the proposed enhanced rebate amount under the proposed Cross-Asset Add Tier (\$0.38) is incrementally higher than current Tier 1 (\$0.31), which the Exchange believes offer slightly less stringent criteria than the proposed Cross-Asset Add Tier, but is incrementally lower than the rebate offered under existing Tiers 3 and 4 (\$0.39 and \$0.43, respectively), which the Exchange believes is more stringent than the proposed criteria under the proposed Cross-Asset Tier. Similarly, the proposed enhanced rebate amount under proposed tier (\$0.38) is the same as current Tier 2 (\$0.38), which the Exchange believes reflects a similar level of difficulty but using alternative types of criteria. The Exchange also notes that the proposed rebates remain within the range of the enhanced rebates offered under the current MM Penny Add Tiers (*i.e.*, \$0.31 – \$0.43).

The Exchange believes that the proposal represents an equitable

¹¹ The Exchange proposes non-substantive changes to fee code RQ to rename “ISE Gemini” to “GMNI”, “MIAX Emerald” to “EMLD”, and “MIAX Pearl” to “PERL.” The Exchange further proposes non-substantive changes to fee code RR to rename “ISE Gemini” to “GMNI”, “MIAX Emerald” to “EMLD”, and “MIAX Pearl” to “PERL.”

¹² See Securities Exchange Act Release No. 97800 (June 26, 2023), 88 FR 42409 (June 30, 2023) (SR-MRX-2023-11).

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

¹⁶ 15 U.S.C. 78f(b)(4).

¹⁷ See *e.g.*, Cboe EDGX U.S. Options Exchange Fee Schedule, Footnote 2, Market Maker Volume Tiers, which provide reduced fees between \$0.02 and \$0.17 per contract for Market Maker Penny and Non-Penny orders where Members meet certain volume thresholds.

¹⁸ See *e.g.*, Cboe BZX U.S. Options Exchange Fee Schedule, Footnotes 6 and 7, Market Maker Penny and Non-Penny Volume Tiers which provide enhanced rebates for Market Maker orders where Members meet certain volume thresholds.

allocation of fees and is not unfairly discriminatory because it applies uniformly to all Market Makers. Additionally, a number of Market Makers have a reasonable opportunity to satisfy the criteria of the proposed Cross-Asset Add Tier, which the Exchange believes is less stringent than the existing Market Maker Add Penny Tiers 3 and 4. The Exchange also believes a number of Market-Makers have a reasonable opportunity to satisfy the proposed Cross-Asset Add Tier's criteria, which the Exchange believes has a similar level of difficulty to current Tier 2 but using alternative types of criteria. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular Market Maker qualifying for the proposed tiers, the Exchange anticipates that approximately six Market Makers will be able to compete for and achieve the proposed criteria of the proposed Cross-Asset Add Tier; however, the proposed tiers are open to any Market-Maker that satisfies the applicable tier's criteria. The Exchange believes the proposed tiers could provide an incentive for other Members to submit additional liquidity on BZX Options and Equities to qualify for the proposed enhanced rebates. To the extent a Member participates on the Exchange but not on BZX Equities, the Exchange does believe that the proposal is still reasonable, equitably allocated and non-discriminatory with respect to such Member based on the overall benefit to the Exchange resulting from the success of BZX Equities. Particularly, the Exchange believes such success allows the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all market participants, which would provide them with access to the benefits on BZX Equities provided by the proposed change, even where a member of BZX Equities is not necessarily eligible for the proposed enhanced rebates on the Exchange.

The Exchange also notes that it does not believe the proposed tier will adversely impact any Member's pricing or ability to qualify for other tiers. Rather, should a Member not meet the proposed criteria, the Member will merely not receive the proposed enhanced rebate, and has four alternative choices to aim to achieve under the MM Penny Add Tiers.

Furthermore, the proposed enhanced rebate would apply to all Members that meet the required criteria under proposed tier.

The Exchange also believes the proposed rule change to amend fee codes RP, RQ, and RR to account for MERC's current assessment of fees for Customer orders and MEMX's expected assessment of fees for Customer orders is reasonable because it is reasonably designed to assess routing fees in line with the Exchange's current approach to routing fees. That is, the proposed rule change is intended to include Customer orders in Penny Program and Non-Penny classes routed to MERC and MEMX in the most appropriate sub-category of fees that approximates the cost of routing to a group of away options exchanges based on the cost of transaction fees assessed by each venue as well as Routing Costs to the Exchange. As noted above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members. The Exchange notes that other options exchanges currently approximate routing fees in a similar manner as the Exchange's current approach.¹⁹ The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because all Members' Customer orders in Penny Program and Non-Penny classes routed to MERC and MEMX will automatically yield fee codes RQ or RR, respectively, and uniformly be assessed the corresponding fee.

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 the proposed Market Maker Penny Add Volume Tier will impose any burden on intramarket competition. Particularly, the proposed change applies uniformly to all Market Makers. As discussed above, to the extent a Member participates on the Exchange but not on BZX Equities, the Exchange notes that the proposed change can provide an overall benefit to

the Exchange resulting from the success of BZX Equities. Such success enables the Exchange to continue to provide and potentially expand its existing incentive programs to the benefit of all participants on the Exchange, whether they participate on BZX Equities or not. The proposed pricing program is also fair and equitable in that membership in BZX Equities is available to all market participants. Additionally, the proposed change is designed to attract additional order flow to the Exchange and BZX Equities. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages Members to send orders, thereby contributing to robust levels of liquidity, which benefits all market participant. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."²⁰

Additionally, the Exchange does not believe the proposed rule change to amend fee codes RP, RQ, and RR will impose any burden on intramarket competition. All Members' Customer orders routing to MERC and currently yielding fee code RP will yield fee code RQ or RR (depending on whether the order is in Penny Program or Non-Penny classes, respectively) and will automatically and uniformly be assessed the current fees already in place for such routed orders, as applicable. Likewise, all Members' Customer orders routed to MEMX will automatically yield fee code RQ or RR (depending on whether the order is in Penny Program or Non-Penny classes, respectively) and uniformly be assessed the corresponding fee. The Exchange notes that other options exchange approximate routing costs in a similar manner as the Exchange's current approach.²¹

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage

²⁰ Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

²¹ *Id.*

¹⁹ See *supra* note 9.

of the overall market. Based on publicly available information, no single options exchange has more than 16% of the market share.²² Therefore, no exchange possesses significant pricing power in the execution of option order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”²³ The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’”²⁴ Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)

of the Act²⁵ and paragraph (f) of Rule 19b-4²⁶ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2023-056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to file number SR-CboeBZX-2023-056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and

copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBZX-2023-056 and should be submitted on or before September 8, 2023.

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

Sherry R. Haywood,
Assistant Secretary.

[FR Doc. 2023-17756 Filed 8-17-23; 8:45 am]

BILLING CODE 8011-01-P

DEPARTMENT OF STATE

[Public Notice: 12144]

Industry Advisory Group: Notice of Charter Renewal; Notice of Open Meeting

Charter renewal: The Department of State announces the renewal of the charter of the Industry Advisory Group (IAG). This committee serves the U.S. government in a solely advisory capacity concerning industry and academia’s latest concepts, methods, best practices, innovations, and ideas related to the OBO mission of providing safe, secure, functional, and resilient facilities that represent the U.S. government to the host nation and support the Department’s achievement of U.S. foreign policy objectives abroad.

Notice of Meeting: The IAG will meet on Thursday, September 21, 2023, from 8:30 a.m. until 5:30 p.m. Eastern Daylight Time. The meeting will be in-person and open to the public from 1:00 p.m.–5:30 p.m. at the U.S. Department of State, located at 2201 C Street NW Washington, DC.

The meeting will largely be devoted to discussions between the Department’s senior management and IAG representatives with respect to industry and academia’s latest concepts, methods, best practices, innovations, and ideas related to supporting OBO’s vital mission. Additionally, time will be provided for members of the public to provide comment.

The public may attend this meeting in-person as seating capacity allows. Admittance to the State Department building will be by means of a pre-arranged clearance list. An open

²⁷ 17 CFR 200.30-3(a)(12).

²² See *supra* note 3.

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

²⁴ *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

²⁵ 15 U.S.C. 78s(b)(3)(A).

²⁶ 17 CFR 240.19b-4(f).