proposal would not be a strain on liquidity providers.[20]

III. Discussion and Commission Findings

The Commission received one supportive comment on the proposed rule change from a market maker. The commenter states that there is a great amount of liquidity in the Short Term Option Daily Expirations, and they do not cause market disruption and may be used to hedge more narrowly defined risks.[21] The commenter expects that the proposed Wednesday ETP Expirations to exhibit the same characteristics and provide the same benefits.[22]

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[23] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that a national securities exchange have rules 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.

As noted above, the Exchange currently has Wednesday Expirations for SPY, QQQ, and IWM. The Exchange proposes to limit the listing of additional Wednesday Expirations to the five ETPs, which generally have similar or lower volatility in terms of post-closing and end of day volatility as SPY, QQQ, and IWM. And, like SPY, QQQ, and IWM, the ETPs have multiple highly-correlated instruments available for hedging. In addition, the Wednesday ETP Expirations will be subject to the same rules for Wednesday Expirations in SPY, QQQ, and IWM. Further, as noted above, the commenter expects that the proposed Wednesday ETP Expirations to exhibit the same characteristics and provide the same benefits as existing Short Term Option Daily Expirations in SPY, QQQ, and IWM.[25] The Exchange's proposal is reasonably designed as a limited expansion of Wednesday Expirations and may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions using options on these ETPs, thus allowing them to better manage their risk exposure. Further, the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in the Wednesday ETP Expirations and has the necessary systems capacity to support the new options series.[26] The proposal, which would overall add a small number of Wednesday ETP Expirations by limiting the additional Wednesday Expirations to five ETPs and to two weeks beyond the current week, reasonably balances the Exchange's desire to offer a wider array of investment opportunitieswith the need to avoid unnecessary proliferation of options series.

Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[27] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–ISE–2023–11), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25378 Filed 11–16–23; 8:45 am]

BILLING CODE 8011–01–P

[20] *See id.*

[21] *See* letter from Richard J. McDonald, Susquehanna International Group, LLP (October 20, 2023).

[22] *See id.*

[23] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] *See supra* note 22 and accompanying text.

[26] *See supra* notes 13 and 14, and accompanying text.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98913; File No. SR–CboeBZX–2023–091]

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

November 13, 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 November 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 forth in sections A, B, and C below, of the most significant aspects of such statements.

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

[2] 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 amend its Fee Schedule, effective November 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 17 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.[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 example, the Exchange currently offers five 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 amend the criteria for one of the MM Penny Add Tiers, specifically the Market Maker Cross-Asset Add Tier, which requires participation on the Exchange's equities platform (''BZX Equities''). Under this tier, the Exchange currently provides a rebate of $0.38 per contract where a Member (1) has an ADAV[4] in Market Maker orders greater than or equal to 0.05% of average OCV;[5] (2) has on BZX Equities an ADAV greater than or equal to 0.35% of average TCV;[6] and (3) is the Lead Market Maker (''LMM'')[7] on BZX Equities in at least 50 equity symbols. The Exchange proposes to amend the criteria for this Market Maker Cross-Asset Add Tier.[8] Under the proposed criteria, the Exchange will provide a rebate of $0.38 per contract where a Member (1) has an ADAV in Market Maker orders greater than or equal to 0.10% of average OCV; (2) has on BZX Equities an ADAV greater than or equal to 0.40% of average TCV; and (3) is the LMM on BZX Equities in at least 50 equity symbols.

Additionally, the Exchange proposes to adopt a new MM Penny Add Tier, specifically Market Maker Cross-Asset Add Tier 2, which also requires participation on BZX Equities.[9] Under the proposed tier, the Exchange would provide a rebate of $0.39 per contract where a Member (1) has an ADAV in Market Maker orders greater than or equal to 0.20% of average OCV; (2) has on BZX Equities an ADAV greater than or equal to 0.45% of average TCV; and (3) is the LMM on BZX Equities in at least 50 equity symbols.

The Exchange believes the amended tier criteria for Market Maker Cross-Asset Tier 1 and the proposed Market Maker Cross-Asset Tier 2, along with the existing MM Penny Add Tiers, continue 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 for Market Maker Cross-Asset Tiers 1 and 2 include thresholds 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 MM Penny Add Tiers, including the Market Maker Cross-Asset Tiers, are 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.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[11] 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)[12] 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,[13] which requires that Exchange rules provide for the equitable allocation of reasonable

[3] *See* Cboe Global Markets U.S. Options Monthly Market Volume Summary (October 30, 2023), available at *https://markets.cboe.com/us/options/market_statistics/.*

[4] ''ADAV'' means average daily added volume calculated as the number of contracts added.

[5] ''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.

[6] ''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.

[7] ''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).

[8] As part of this proposed rule change, the Exchange proposes to rename this Market Maker Cross-Asset Tier as Market Maker Cross-Asset Tier 1.

[9] 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.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the Exchange believes the proposed changes to the MM Penny Add Tiers are reasonable because they provide 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,[14] including the Exchange,[15] 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, namely Market Maker Cross-Asset Tier 2, 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 MM Penny Add Tiers may encourage those Members who could not previously achieve the criteria under existing MM Penny Add Tiers to increase their order flow on BZX Options and Equities.

For example, the proposed Cross-Asset Tier 2 would provide an opportunity for Members who have an ADAV in Market Maker orders of at least 0.20% of average OCV, but less than the more stringent 0.45% of average OCV (the requirement under current Tier 3), 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 3 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 0.35% ADAV threshold under current Tier 2, 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 rebate is reasonable based on the difficulty of satisfying the tier's criteria and ensures the proposed rebate 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 2 ($0.39) is incrementally higher than current Tiers 1 and 2 ($0.31 and $0.38, respectively), which the Exchange believes offer slightly less stringent criteria than the proposed Cross-Asset Add Tier 2, but is incrementally lower than the rebate offered under existing Tier 4 ($0.43), which the Exchange believes is more stringent than the proposed criteria under the proposed Cross-Asset Tier 2. Similarly, the proposed enhanced rebate amount under the proposed Cross-Asset Tier 2 ($0.39) is the same as current Tier 3 ($0.39), which the Exchange believes reflects a similar level of difficulty but using alternative types of criteria. Finally, the proposed enhanced rebate amount under the proposed Cross-Asset Tier 2 ($0.39) is incrementally higher than the rebate offered under existing Cross-Asset Add Tier 1, which the Exchange believes is less stringent than the proposed criteria than the proposed Cross-Asset Add Tier 2. 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).

Further, the Exchange believes that the amended criteria for Market Maker Cross-Asset Tier 1 is a reasonable, as such changes are designed to encourage Members to increase their liquidity on the Exchange and also their participation on BZX Equities to continue to achieve the rebate offered under Market Maker Cross-Asset Tier 1. The Exchange notes that increased Market Maker activity (including LMMs), particularly, facilitates tighter spreads and an increase in overall liquidity provider activity, both of which signal additional corresponding increase in order flow from other market participants, contributing towards a robust, well-balanced market ecosystem. Indeed, increased overall order flow benefits investors across both the Exchange's options and equities platforms by continuing to deepen the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, 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 believes that the proposal represents an equitable 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 2, which the Exchange believes is less stringent than the existing MM Penny Add Tiers 3 and 4, and the criteria of Cross-Asset Add Tier 1, as amended, which the Exchange believes is less stringent than MM Penny Add Tier 1. 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 one Market Maker will be able to compete for and achieve the proposed criteria of Cross-Asset Add Tier 1 and approximately one Market Maker will be able to compete for and achieve the proposed criteria of the proposed Cross-Asset Add Tier 2; however, the proposed tiers are open to any Market Maker that satisfies the applicable tiers' 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

[14] *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.

[15] *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.

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.

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 changes to the MM Penny Add Tiers 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 changes 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.'' [16]

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 17 other options exchanges and off-exchange venues. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single options exchange has more than 17% of the market share.[17] 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.'' [18] 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' . . . .''.[19] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

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

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 [21] 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–2023–091 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange

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

[17] *See supra* note 3.

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

[19] *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)).

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–091. 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–2023–091 and should be submitted on or before December 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–25383 Filed 11–16–23; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–98906; File No. SR–BOX–2023–25]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on the BOX Options Market LLC Facility To Amend Sections IV.A (Non-Auction Transactions) and IV.A.1 (Tiered Volume Rebate for Non-Auction Transactions)

November 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 November 1, 2023, BOX Exchange LLC (''Exchange'') 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 Exchange filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. 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 the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend Section IV.A (Non-Auction Transactions) and Section IV.A.1 (Tiered Volume Rebate for Non-Auction Transactions) of the Fee Schedule on the BOX Options Market LLC (''BOX'') options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *https://rules.boxexchange.com/rulefilings.*

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 Section IV.A (Non-Auction Transactions) and Section IV.A.1 (Tiered Volume Rebate for Non-Auction Transactions) of the BOX Fee Schedule. First, the Exchange proposes to increase Public Customer taker fees on transactions for options overlying the Standard and Poor's Depositary Receipts Trust (''SPY'') in Section IV.A.[5] Next, the Exchange proposes to reduce Tier 4 rebates and establish a new Tier 5 in the Tiered Volume Rebate for Non-Auction Transactions for Percentage National Customer Volume in Multiply-Listed Options Classes.

Non-Auction Transactions

In Section IV.A of the BOX Fee Schedule, fees and credits for Electronic Non-Auction Transactions are assessed depending on three factors: (i) the account type of the Participant submitting the order; (ii) whether the Participant is a liquidity provider or liquidity taker; and (iii) the account type of the contra party. Currently, when a Public Customer SPY order is a liquidity taker contra to a Professional Customer, Broker Dealer, or a Market Maker, the Public Customer is assessed no fee. The Exchange now proposes to increase Public Customer taker fees on SPY Non-Auction Transactions. Accordingly, when a Public Customer SPY order is a liquidity taker contra to a Professional Customer, Broker Dealer, or a Market Maker, the Public Customer will be assessed a fee of $0.10.

Tiered Volume Rebate for Non-Auction Transactions

The Exchange also proposes to amend Section IV.A.1 of the Fee Schedule. Specifically, the Exchange proposes to add a Tier and to adjust the Percentage Thresholds of National Customer Volume in Multiply-Listed Options Classes. Currently, Public Customers

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

[2] 17 CFR 240.19b–4.

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

[4] 17 CFR 240.19b–4(f)(2).

[5] Options overlying Standard and Poor's Depositary Receipts/SPDRs (''SPY'') are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index.