

comment in the **Federal Register** on August 20, 2019. The 180th day after publication of the Notice is February 16, 2020, and April 16, 2020 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates April 16, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeEDGX-2019-048).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88180; File No. SR-CboeBZX-2019-069]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce the Small Retail Broker Distribution Program

February 12, 2020.

On August 1, 2019, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the BZX fee schedule to introduce a Small Retail Broker Distribution Program (the “Program”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, under Sections

19(b)(2) and (b)(3)(C) of the Act,<sup>5</sup> the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change (“OIP”).<sup>6</sup> The Commission has received no comment letters in response to the OIP.

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and comment in the **Federal Register** on August 20, 2019. The 180th day after publication of the Notice is February 16, 2020, and April 16, 2020 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates April 16, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBZX-2019-069).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88179; File No. SR-CboeBYX-2019-012]

### Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Introduce the Small Retail Broker Distribution Program

February 12, 2020.

On August 1, 2019, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the BYX fee schedule to introduce a Small Retail Broker Distribution Program (the “Program”). The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on August 20, 2019.<sup>4</sup> The Commission received no comment letters regarding the proposed rule change. On September 30, 2019, under Sections 19(b)(2) and (b)(3)(C) of the Act,<sup>5</sup> the Commission temporarily suspended the proposed rule change and instituted proceedings to determine whether to approve or disapprove the proposed rule change (“OIP”).<sup>6</sup> The Commission has received no comment letters in response to the OIP.

Section 19(b)(2) of the Act<sup>7</sup> provides that, after initiating disapproval proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for notice and

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(2) and (b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 86670 (August 14, 2019), 84 FR 43207 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> See Securities Exchange Act Release No. 87166 (September 30, 2019), 84 FR 53197 (October 4, 2019).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 200.30-3(a)(57).

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

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

<sup>3</sup> 15 U.S.C. 78s(b)(2) and (b)(3)(A).

<sup>4</sup> See Securities Exchange Act Release No. 86667 (August 14, 2019), 84 FR 43233 (“Notice”).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(C).

<sup>6</sup> See Securities Exchange Act Release No. 87164 (September 30, 2019), 84 FR 53208 (October 4, 2019).

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 200.30-3(a)(57).

comment in the **Federal Register** on August 20, 2019. The 180th day after publication of the Notice is February 16, 2020, and April 16, 2020 is an additional 60 days from that date.

The Commission finds it appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> designates April 16, 2020 as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR-CboeBYX-2019-012).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88181; File No. SR-NYSEARCA-2020-10]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

February 12, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on February 3, 2020, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (“Fee Schedule”) to amend the Retail Order Step-Up Tier 2 pricing tier. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at

the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the Retail Order Step-Up Tier 2 pricing tier. The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders<sup>4</sup> to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective February 3, 2020.

###### Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.”<sup>5</sup>

As the Commission itself recognized, the market for trading services in NMS stocks has become “more fragmented and competitive.”<sup>6</sup> Indeed, equity trading is currently dispersed across 13

exchanges,<sup>7</sup> 31 alternative trading systems,<sup>8</sup> and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 20% market share (whether including or excluding auction volume).<sup>9</sup> Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equity trades (excluding auction volume).<sup>10</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. The competition for Retail Orders<sup>11</sup> is even more stark, particularly as it relates to exchange versus off-exchange venues. For example, the Exchange examined Rule 606 disclosures from three prominent retail brokerages: E-Trade, TD Ameritrade and Charles Schwab. For securities listed on the New York Stock Exchange LLC in the third quarter of 2019, TD Ameritrade routed 92% of its limit orders to off-exchange venues.<sup>12</sup> Similarly, E-Trade Financial and Charles Schwab routed more than 73% and more than 97%,<sup>13</sup> respectively, of its limit orders to off-exchange venues. With respect to non-marketable order

<sup>7</sup> See Cboe U.S. Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>8</sup> See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

<sup>9</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>10</sup> See *id.*

<sup>11</sup> A Retail Order is an agency order that originates from a natural person and is submitted to the Exchange by an ETP Holder, provided that no change is made to the terms of the order to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See Securities Exchange Act Release No. 67540 (July 30, 2012), 77 FR 46539 (August 3, 2012) (SR-NYSEArca-2012-77).

<sup>12</sup> See <https://www.tdameritrade.com/retail-en-us/resources/pdf/AMTD2054.pdf>.

<sup>13</sup> See <https://content.etrade.com/etrade/powerpage/pdf/OrderRouting11AC6.pdf>. See also [https://www.schwab.com/public/schwab/nn/legal\\_compliance/important\\_notices/order\\_routing.html](https://www.schwab.com/public/schwab/nn/legal_compliance/important_notices/order_routing.html).

<sup>8</sup> *Id.*

<sup>9</sup> 17 CFR 200.30-3(a)(57).

<sup>11</sup> 15 U.S.C. 78s(b)(1).

<sup>12</sup> 15 U.S.C. 78a.

<sup>13</sup> 17 CFR 240.19b-4.

<sup>4</sup> All references to ETP Holders in connection with this proposed fee change include Market Makers.

<sup>5</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005)

<sup>6</sup> See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Final Rule).