

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-82874; File No. SR-CboeBZX-2018-017)

March 14, 2018

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Market Data Section of the Fee Schedule Applicable to its Equity Options Platform

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 March 6, 2018, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change 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 Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the Market Data section of its fee schedule applicable to its equity options platform (“BZX Options”) to adopt fees for a new data feed to be known as BZX Options Top.

The text of the proposed rule change is available at the Exchange’s website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission’s Public

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).

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 parts of such statements.

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

1. Purpose

The BZX Options Top feed is a data feed that offers top of book quotations and execution information based on options orders entered into the System.⁵ The Exchange proposes to amend its fee schedule to incorporate fees for distribution of the BZX Options Top feed.⁶ The proposed fees include the following, each of which are described in detail below: (i) Distribution Fees for

⁵ Exchange Rule 21.15(b)(2). See also Securities Exchange Act Release No. 82776 (February 26, 2018) (SR-CboeBZX-2018-013) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt the BZX Options Top Feed).

⁶ The Exchange also proposed to rename Multicast Pitch as BZX Options Depth to reflect a recent change to the Exchange's rules that was filed with the Commission. Id.

both Internal and External Distributors;⁷ (ii) Usage Fees for both Professional⁸ and Non-Professional⁹ Users; and (iii) an Enterprise Fee. The Exchange is proposing identical fees for the BZX Options Top feed as to those currently in place for the BZX Options Depth feed.

Distribution Fees. As proposed, each Internal Distributor that receives BZX Options Top shall pay a fee of \$3,000 per month. Each External Distributor that receives BZX Options Top shall pay a fee of \$2,000 per month. The Exchange also proposes to make clear in its fee schedule that where a Distributor acts as both an External and Internal Distributor of BZX Options Top that it will pay the greater of the two Distribution fees for internal or external use and not be charged both fees each month.

User Fees. The Exchange proposes to charge Internal Distributors and External

⁷ A “Distributor” is defined as “any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.” See the Exchange’s fee schedule available at http://markets.cboe.com/us/options/membership/fee_schedule/bzx/. An “Internal Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.” *Id.* An “External Distributor” is defined as “a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.” *Id.*

⁸ A “Professional User” is defined as “any User other than a Non-Professional User.” *Id.*

⁹ A “Non-Professional User” is defined as “a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an “investment adviser” as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.” *Id.*

Distributors that redistribute the BZX Options Depth feed different fees for their Professional Users and Non-Professional Users. The Exchange will assess a monthly fee for Professional Users of \$30.00 per User. Non-Professional Users will be assessed a monthly fee of \$1.00 per User. The proposed rates are identical to then those currently charged for the BZX Options Depth feed. Since both the BZX Option Depth Feed and BZX Options Top feed both include top-of-book information, the Exchange proposes to not charge separate per User fees for each product. As a result, one User fee would allow access to the BZX Options Top Feed and the BZX Options Depth Feed. The Exchange proposes to amend its fee schedule accordingly.

Distributors that receive the BZX Options Depth feed will be required to count every Professional User and Non-Professional User to which they provide the market data product(s), the requirements for which are identical to that currently in place for BZX Options Depth. Thus, the Distributor's count will include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data. However, because one User fee would allow access to the BZX Options Top Feed and the BZX Options Depth Feed, Distributors that provide a person or device access to both the BZX Options Top Feed and the BZX Options Depth Feed need only to count that person or device as a single User and not a User of both market data products. Distributors must report all Professional and Non-Professional Users in accordance with the following:

- In connection with a Distributor's distribution of the market data product, the Distributor should count as one User each unique User that the Distributor has entitled to have access to the market data product. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device.

- The Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the market data product, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the market data product (*e.g.*, a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual User.
- Distributors should report each unique individual person who receives access through multiple devices as one User so long as each device is dedicated specifically to that individual.
- If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

Enterprise Fee. The Exchange also proposes to establish a \$3,500 per month Enterprise Fee that will permit a recipient firm who receives BZX Options Depth from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. For example, if a recipient firm had 15,000 Professional Users who each receive BZX Options Top at \$30.00 per month, then that recipient firm will pay \$450,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$3,500 for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for each Distributor that controls the display of BZX Options Depth if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of natural person users of each product, including both Professional and Non-

Professional Users.

Implementation Date

The Exchange intends to implement the proposed changes to its fee schedule on March 9, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, as they are designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all recipients of Exchange data and that the proposed fees are competitive with those charged by other venues and, therefore, reasonable and equitably allocated to recipients.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act¹² in that it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Furthermore, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹³ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory. In adopting Regulation NMS, the Commission granted

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

¹² 15 U.S.C. 78k-1.

¹³ 17 CFR 242.603.

self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

In addition, the proposed fees would not permit unfair discrimination because all of the Exchange's customers and market data vendors will be subject to the proposed fees on an equivalent basis. BZX Options Depth is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Moreover, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

In addition, the fees that are the subject of this rule filing are constrained by competition. As explained below in the Exchange's Statement on Burden on Competition, the existence of alternatives to BZX Options Depth further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives. That is, the Exchange competes with other exchanges (and their affiliates) that provide similar market data products. If another exchange (or its affiliate) were to charge less to distribute its similar product than the Exchange charges to distribute BZX Options Depth, prospective Users likely would not subscribe to, or would cease subscribing to BZX Options Depth.

The Exchange notes that the Commission is not required to undertake a cost-of-service or rate-making approach. The Exchange believes that, even if it were possible as a matter of economic theory, cost-based pricing for non-core market data would be so complicated that it could not be done practically.

Distribution Fee. The Exchange believes that the proposed Distribution Fees are also reasonable, equitably allocated, and not unreasonably discriminatory. The fees for Members and non-Members are uniform except with respect to reasonable distinctions with respect to internal and external distribution, the fee for both are equal for each of the market data products subject to this proposal. The proposed amendment to the Internal Distributor fee is equitable and reasonable as the proposed fees is similar to fees currently charged by the Nasdaq Stock Market LLC (“Nasdaq”) for their options top-of-book data product. Nasdaq currently charges external distributors of BONO,¹⁴ \$2,000 per month.¹⁵ Nasdaq’s fee for external distribution is identical to that proposed by the Exchange herein. In addition, the Chicago Board Options Exchange, Incorporated (“CBOE”) charges a monthly fee of \$9,000 to internal and external distributors of its top-of-book data.¹⁶

The Exchange proposes to charge External Distributors lower fees than Internal Distributors to promote broader distribution of exchange data. The Exchange notes that External

¹⁴ BONO stands for Best of Nasdaq Options (“BONOSM”) is a data feed that provides The Nasdaq Options Market (“NOM”) Best Bid and Offer and last sale information for trades executed on NOM. See Nasdaq Sec. 4(d), NASDAQ Options Market Data Distributor Fees available at <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing>.

¹⁵ See Nasdaq Sec. 4(a), NASDAQ Options Market Data Distributor Fees available at <http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing>.

¹⁶ See CBOE Market Data Express, LLC (MDX) CBOE Streaming Markets Fee Schedule available at <https://www.cboe.org/publish/mdxfees/mdxfeescheduleforboedatafeeds.pdf> [sic].

Distributors redistribute BZX Options Top to those outside of their organization while Internal Distributors distribute BZX Options Top within their own organization. Charging lower fees for external distribution should encourage Distributors, such as market data vendors who solely redistribute market data, to subscribe to BZX Options Top as an External Distributor, therefore, expanding the distribution network of the Exchange's data.

User Fees. The Exchange believes that implementing the Professional and Non-Professional User fees for BZX Options Top are equitable and reasonable because they will result in greater availability to Professional and Non-Professional Users. Moreover, introducing a modest Non-Professional User fee for BZX Options Depth is reasonable because it provides an additional method for retail investors to access BZX Options Top data by providing the same data that is available to Professional Users. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The fee structure of differentiated Professional and Non-Professional fees is utilized by the Exchange for the Cboe One Feed and has long been used by other exchanges for their proprietary data products, and by the Nasdaq UTP and the CTA and CQ Plans in order to reduce the price of data to retail investors and make it more broadly available.¹⁷ Offering BZX Options Top to Non-Professional Users with the same data available to Professional Users results in greater equity among data recipients. The requirement that Distributors count every Professional User and Non-Professional User to which they provide the market data product(s) is

¹⁷ See Securities Exchange Act Release Nos. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR-BATS-2015-11); 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR-EDGA-2015-09); 74282 (February 17, 2015), 80 FR 9487 (February 23, 2015) (SR-EDGX-2015-09); and 74284 (February 18, 2015), 80 FR 9792 (February 24, 2015) (SR-BYX-2015-09). See also, e.g., Securities Exchange Act Release No. 20002, File No. S7-433 (July 22, 1983) (establishing nonprofessional fees for CTA data); and Nasdaq Rules 7023(b), 7047.

also equitable and reasonable because the requirements are identical to that currently in place for other market data products offered by the Exchange. Also, the Exchange believes it is reasonable to charge one User fee for access to the BZX Options Top Feed and the BZX Options Depth Feed as the BZX Options Depth Feed also included top-of-book data.

In addition, the proposed fees are reasonable when compared to similar fees for comparable products offered by Nasdaq. Specifically, Nasdaq charges a fee of \$40 per month to professional users and \$1.00 per month to non-professional users of its BONO feed.¹⁸ Each of these fees charged by Nasdaq are either equal to or higher than that proposed herein.

Enterprise Fee. The proposed Enterprise Fee for BZX Option Top is equitable and reasonable as the fees proposed could result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. Meanwhile, the Exchange notes that Nasdaq does not offer such potential fee relief for its BONO feed.¹⁹ If a recipient firm has a smaller number of Professional Users of BZX Options Top, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Options Top, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count

¹⁸ See Nasdaq Sec. 4(a), NASDAQ Options Market Data Distributor Fees [available at http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing](http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing).

¹⁹ Id.

natural person users every six months, which is a significant reduction in administrative burden. Finally, the Exchange believes that it is equitable and not unfairly discriminatory to establish an Enterprise Fee because it reduces the Exchange's costs and the Distributor's administrative burdens in tracking and auditing large numbers of Users.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The Exchange's ability to price BZX Options Top is constrained by: (i) competition among exchanges, other trading platforms, and Trade Reporting Facilities ("TRF") that compete with each other in a variety of dimensions; (ii) the existence of inexpensive real-time consolidated data and market-specific data and free delayed data; and (iii) the inherent contestability of the market for proprietary data.

The Exchange and its market data products are subject to significant competitive forces and the proposed fees represent responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow.

In addition, BZX Options Top competes with a number of alternative products. For instance, BZX Options Top does not provide a complete picture of all trading activity in a security. Rather, the other national securities exchanges, the several TRFs of FINRA, and Electronic Communication Networks ("ECN") that produce proprietary data all produce trades and trade reports. Each is currently permitted to produce last sale information products, and many currently do, including Nasdaq and NYSE. In addition, market participants can gain

access to BZX Options last sale and depth-of-book quotations, though integrated with the prices of other markets, on feeds made available through the SIPs.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on Exchange data products and the Exchange's compelling need to attract order flow imposes significant competitive pressure on the Exchange to act equitably, fairly, and reasonably in setting the proposed data product fees. The proposed data product fees are, in part, responses to that pressure. The Exchange believes that the proposed fees would reflect an equitable allocation of its overall costs to users of its facilities.

In addition, when establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all Users. The existence of alternatives to BZX Options Top, including existing similar feeds by other exchanges, consolidated data, and proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

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

The Exchange has neither solicited nor received written 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 Act²⁰ and paragraph (f) of Rule 19b-4 thereunder.²¹ 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2018-017 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-2018-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CboeBZX-2018-017 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Eduardo A. Aleman
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).