

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-98181; File No. SR-CboeBZX-2023-059)

August 21, 2023

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 11.22 (“Data Products”) to Eliminate the ETF Implied Liquidity Feed

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 8, 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 and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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 Exchange Rule 11.22 (“Data Products”) to eliminate one of the Exchange’s data offerings. 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/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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<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)(3)(A)(iii).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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 Rule 11.22 (“Data Products”) to eliminate the data product listed under subparagraph (n), the “ETF Implied Liquidity” data feed<sup>5</sup>, which the Exchange intends to decommission on August 8, 2023.

By way of background, the ETF Implied Liquidity feed is an optional data feed that provides the Exchange’s proprietary calculation of the implied liquidity and the aggregate best bid and offer (“BBO”) of all displayed orders on the Exchange and its affiliated exchanges<sup>6</sup> for all standard, non-leveraged U.S. equity Exchange Traded Funds (“ETFs”) traded on the System.<sup>7</sup> An ETF’s implied liquidity disseminated via the feed consists of the ETF’s implied BBO (including the implied size) calculated via a proprietary methodology based on the national best bid and offer (“NBBO”), the number of shares of securities underlying one creation unit of the

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<sup>5</sup> The ETF Implied Liquidity Feed was adopted in 2017. See Securities Exchange Act Release No. 80580 (May 3, 2017), 82 FR 21585 (May 9, 2017) (SR-BatsBZX-2017-25) and Securities Exchange Act Release No. 80772 (May 25, 2017), 82 FR 25389 (June 1, 2017) (SR-BatsBZX-2017-036).

<sup>6</sup> The Exchange’s affiliates are Cboe EDGA Exchange, Inc., (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), and Cboe BYX Exchange, Inc. (“BYX”) (“collectively, the “Bats Exchanges”).

<sup>7</sup> The securities underlying each of the U.S. equity ETFs included in the proposed feed must be considered NMS Securities as defined under Rule 600(b)(46) of Regulation NMS. 17 CFR 242.600(b)(46).

ETF, and the estimated cash included in one creation unit of the ETF. The Exchange disseminates the aggregate BBO through the ETF Implied Liquidity feed no earlier than it provides its BBO to the processors under the CTA Plan or the Nasdaq/UTP Plan.

Currently there are no market participants that are taking the ETF Implied Liquidity feed. As such, the Exchange no longer wishes to maintain or offer this product and therefore proposes to decommission the ETF Implied Liquidity feed and delete the corresponding reference to the product from its rulebook.<sup>8</sup>

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> 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)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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<sup>8</sup> The Exchange intends to also submit a corresponding rule filing to eliminate reference to this feed and corresponding fees in the Exchange's fee schedule. See SR-CboeBZX-2023-060.

<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> Id.

In particular, the Exchange believes that the proposal to decommission the ETF Implied Liquidity feed is appropriate given the non-usage of the product among market participants. Further, the ETF Implied Liquidity feed is optional, and its use is not a prerequisite for trading on the Exchange. The Exchange also notes that is not required to maintain or offer any one proprietary market data product, including the ETF Implied Liquidity feed. The Exchange also believes that the proposed rule change is fair and equitable and is not designed to permit unfair discrimination as it applies uniformly to all Members (i.e., the product will no longer be available for any Member). Eliminating reference to this feed in the Exchange's rulebook will promote clarity in the rules as to what data products may or may not be available.

**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 ETF Implied Liquidity feed is an optional data feed offered by the Exchange, it is not a prerequisite to trading on the Exchange, and the Exchange is not required to offer or maintain such feed.

The Exchange believes that the proposed deletion does impose any intramarket competition as it applies to all Members (i.e. the product will no longer be available to any Member). The Exchange believes that the proposed rule change also does not impose any undue burden on intermarket competition. The ETF Implied Liquidity feed is an optional data product offered by the Exchange and market participants are not required to subscribe to it and the Exchange is not required to offer it. Moreover, the proposed change is not being submitted for competitive reasons, but rather to eliminate a data product that is not being actively used by market participants today.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange requested the waiver because it intended to decommission the ETF Implied Liquidity feed effective August 8, 2023, and eliminate such references from the Exchange’s rulebook to alleviate potential confusion as to what data products the Exchange currently offers. Because the proposed rule change does not raise any novel legal or regulatory

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>16</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2023-059 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.

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<sup>16</sup> For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-CboeBZX-2023-059. 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-2023-059 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>17</sup> 17 CFR 200.30-3(a)(12), (59).