

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98183; File No. SR-CboeBZX-2023-060)

August 21, 2023

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule to Eliminate Reference to the ETF Implied Liquidity Feed and Corresponding Fees

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 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, 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” or “BZX Equities”) 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/equities/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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its Fee Schedule applicable to its equities trading platform (“BZX Equities”) to eliminate reference to the ETF Implied Liquidity Feed and corresponding fees, effective August 8, 2023.

The Exchange proposes to amend the Market Data section of its fee schedule to eliminate reference to, and corresponding fees for, a market data product called the ETF Implied Liquidity Feed.³ 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 exchanges⁴ for all standard, non-leveraged U.S. equity Exchange Traded Funds (“ETFs”) traded on the System.⁵ 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 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. The Exchange currently assesses (i)

³ 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).

⁴ 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”).

⁵ 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)

Distribution Fees for both Internal and External, Distributors⁶ (ii) Usage Fees for both Professional⁷ and Non-Professional⁸ Users; and a (iii) Data Consolidation fee. Specifically, the Exchange assesses (i) Internal Distributors a monthly fee of \$1,500 and External Distributors a monthly fee of \$5,000; (ii) Professional Users a monthly fee of \$0.25 (if receiving internally) or \$25 (if receiving externally); (iii) Non-Professional Users a monthly fee of \$1.00 (whether receiving internally or externally); and a monthly Data Consolidation Fee of \$500. The Fee Schedule currently provides that Distributors of the Cboe One Feed (as described in Rule 11.22(j)) may also receive upon request access to the ETF Implied Liquidity Feed without incurring an additional Logical Port fee for the ETF Implied Liquidity Feed. It also provides that External Distributors of the Cboe One Feed will also receive upon request access to the ETF Implied Liquidity Feed for external distribution only without incurring an additional Distributor fee or, if an External Distributor, the Data Consolidation fee for the ETF Implied Liquidity Feed.

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

⁶ 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.” 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.” 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.”

⁷ A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

⁸ A “Non-Professional User” of an Exchange Market Data product is 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.

to decommission the ETF Implied Liquidity feed and delete the corresponding reference to the product from its Fee Schedule.⁹

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.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 as well as Section 6(b)(4)¹³ as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

In particular, the Exchange believes that the proposal to decommission the ETF Implied Liquidity feed and remove reference to the feed and corresponding fees in the Fee Schedule is

⁹ The Exchange intends to also submit a corresponding rule filing to eliminate reference to this feed in the Exchange's Rulebook under Exchange Rule 11.22(n). See SR-CboeBZX-2023-059.

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)

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 Fee Schedule will promote clarity in the rules as to what data products may or may not be available. The Exchange has also provided notice of such termination.¹⁴

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

¹⁴ See Exchange Notice C2023073104, "Cboe Equities Fee Schedule Updates Effective August 1, 2023" issued on July 31, 2023 available at https://cdn.cboe.com/resources/fee_schedule/2023/Cboe-Equities-Exchanges-Fee-Schedule-Updates-Effective-August-1-2023.pdf.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁵ and paragraph (f) of Rule 19b-4¹⁶ 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-2023-060 on the subject line.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f).

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-2023-060. 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-2023-060 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.¹⁷

Sherry R. Haywood,

Assistant Secretary.

¹⁷ 17 CFR 200.30-3(a)(12).