

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97138; File No. SR-CboeBZX-2023-016)

March 14, 2023

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

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 February 28, 2023, Cboe BZX Exchange, Inc. (“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 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 Options”) 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 fees Fee Schedule to modify its market data fees for BZX Options Top.³ Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees, modify the Enterprise Fee for BZX Options Top and make other clarifying, non-substantive changes.⁴

The Exchange first proposes to reduce the rates for Professional and Non-Professional User fees for BZX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the BZX Options Data Feeds different fees for their Professional Users⁵ and Non-Professional Users⁶. The Exchange currently assesses a monthly fee

³ BZX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System. Uncompressed data is disseminated “as is” in the native format by the Exchange, with no compression.

⁴ The Exchange initially filed the proposed fee changes on January 3, 2023 (SR-CboeBZX-2023-001). On February 28, 2023, the Exchange withdrew that filing and submitted this proposal.

⁵ A Professional User of an Exchange Market Data product is any User other than a Non-Professional User. The Exchange proposes to amend the definition of “Professional User” in the Fee Schedule to further clarify that a Professional User is a natural person recipient of an Exchange Data product who is not a Non-Professional User.

⁶ 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

for Professional Users of \$30.00 per User and a monthly fee of \$1.00 per Non-Professional User.⁷ One User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.⁸ The Exchange proposes to reduce the rates for the User fees for BZX Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from \$30 per user to \$5 per user and (ii) Non-Professional User fee from \$1.00 per user to \$0.10 per user. The Exchange also proposes to start charging separate User fees for BZX Options Top and BZX Options Depth Feed. The Exchange therefore proposes to eliminate the language under the BZX Options Top table and BZX Options Depth Feed table that states one User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.⁹

The Exchange next proposes to increase the current monthly Enterprise Fee. The Enterprise Fee permits a recipient firm (i.e., a Distributor) to purchase a monthly (and optional) Enterprise license to receive the BZX Options Top Feed for distribution to an unlimited number of Professional and Non-Professional Users.¹⁰ The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for

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.

⁷ Distributors that receive BZX Options Data are required to count every Professional User and Non-Professional User to which they provide the data feed(s).

⁸ BZX Options Depth is an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System.

⁹ The Exchange is not proposing any changes to the current User Fee amounts for BZX Options Depth Feed at this time.

¹⁰ The Exchange proposes to amend the description relating to the Enterprise Fees under the BZX Options Top and Depth fee tables to clarify that Distributors are the market participant that would be purchasing the monthly Enterprise license for purposes of distribution to Professional and Non-Professional Users.

unlimited number of Professional and Non-Professional Users. Like User fees, it is also assessed in addition to the Distribution Fee.¹¹ Currently, the Exchange assesses an Enterprise Fee of \$3,500 per month. The Exchange proposes to increase the Enterprise Fee to \$20,000 per month. For example, if a Distributor distributes BZX Options Top to 15,000 Professional Users who each receive BZX Options Top at \$5.00 per month (as proposed), then that Distributor will pay \$75,000 per month in Professional Users fees. Under the proposed Enterprise Fee, it will pay a flat fee of \$20,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of BZX Options Top if it wishes for such User to be covered by the Enterprise Fee rather than by per User fees.¹² A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, it must provide the Exchange with a count of the total number of Professional and Non-Professional Users of BZX Options Top.¹³

The Exchange lastly proposes to add references to “Depth” in the description of the Distribution Fees and Enterprise Fee under the BZX Options Depth Feed table to clarify which data feed such fees currently applies to, thereby alleviating potential confusion. The Exchange also proposes to replace references to “Recipient firm” with “Distributors” to more accurately reflect the type of market participants the fees are applicable to, thereby alleviating potential confusion. Lastly, the Exchange proposes to modify the definition of Professional User under the

¹¹ The Exchange also proposes to clarify in the descriptions relating to the Enterprise Fees that (i) it is an alternative to “Professional and Non-Professional” User fees and (ii) is in addition to the Distribution Fee.

¹² For example, if a Distributor that distributes BZX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

¹³ See Cboe Global Markets north American Data Policies.

definitions section of the Market Data Fees section to clarify that a Professional “User” is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User. The proposed modification also aligns the definition with that of the definition used by the Exchange’s affiliates Cboe Exchange, Inc. and Cboe C2 Exchange, Inc.¹⁴

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.¹⁵ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁶ 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 Section 6(b)(4) of the Act,¹⁷ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly

¹⁴ See Cboe Data Services, LLC Fees Schedule and Cboe C2 Options Fees Schedule.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(4).

available information, no single options exchange has more than 17% of the market share.¹⁸ The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.¹⁹ Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top Feed. Further, the quote and last sale data contained in the BZX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.²⁰ Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the BZX Options Top 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. As described above, market participants have a wide variety of alternative market data products from which to

¹⁸ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁹ See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

²⁰ The Exchange notes that it makes available the top-of-book and last sale data that is included in the BZX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information²¹ from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.²² As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”²³ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data

²¹ “Consolidated Options Information” means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“OPRA Plan”), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange’s Data Order Form (used for requesting the Exchange’s market data products) requires confirmation that the requesting market participant receives data from OPRA.

²² Id.

²³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of BZX Options Top Data.

The Exchange believes the proposed changes to reduce the rates of the current Professional and Non-Professional User fees are reasonable as Distributors will be subject to lower BZX Options Top User fees. Additionally, the User fees continue to be in line with and/or lower than User fees assessed by other exchanges for similar data.²⁴

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 Exchange also believes continuing to offer BZX Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more

²⁴ See e.g., Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total combined Professional User fee for the Exchange's market data products is still lower at \$35 per Professional User (i.e., \$5 per Professional Users of BZX Options Top, as proposed, and \$30 per Professional User of BZX Options Depth). The Exchange's combined Non-Professional User Fee at \$1.10 per Non-Professional User (i.e., \$0.10 per Non-Professional User of BZX Options Top, as proposed, and \$1 per Non-Professional User of BZX Options Depth) is still in line with, and not a significant departure from, PHLX's and NYSE American's aforementioned Non-Professional User fees.

directly engaged in the markets.

The Exchange next notes it is not required to charge a single User fee to cover all its available data products, but none-the-less has not charged separate User Fees for both BZX Options Top and BZX Options Depth since BZX Options Top was adopted in March 2018.²⁵ However, the Exchange no longer wishes to continue to have a single fee. The Exchange believes the proposed change is reasonable, equitable and not unfairly discriminatory as the Top and Book Depth Data Feeds are purely optional. Only those Distributors that deem the products to be of sufficient overall value and usefulness would purchase them for purposes of distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and indeed may choose to receive none, one, or several of the Exchange's market data products. Indeed, less than 25% of the Exchange's market data subscriptions is for BZX Options Top. Additionally, the Exchange is not required to provide any fee waiver to Distributors of BZX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to Distributors.

The proposed increased Enterprise Fee for BZX Options Top Feed is equitable and reasonable as the proposed fee could still result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of BZX Options Top, then it may continue using the per User structure and benefit from the proposed per BZX Options Top User Fee reductions. By reducing prices Distributors 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 Data, thereby

²⁵ See Securities Exchange Act Release No. 82874 (March 14, 2018), 83 FR 12210 (March 20, 2018) (SR-CboeBZX-2018-017).

expanding the distribution of this market data for the benefit of investors. The Exchange notes that currently no Distributors have purchased an Enterprise license. The Exchange believes however, that the proposed lower User fees for BZX Options Top may incentivize additional External Distributors to distribute BZX Options Top and enlist additional Users. As noted, as a Distributor's User base grows, it may make sense for a Distributor to purchase the alternative Enterprise license to cap its fees. In connection with this potential increase in Users, the Exchange believes it is therefore also reasonable to increase the Enterprise Fee. That said, as described above, the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange further believes that the Enterprise Fee, even as amended, is reasonable because it simplifies reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee do have to report the number of Users on a monthly basis as they currently do, but rather only have to count authorized users every six months, which is a significant reduction in administrative burden.

The Exchange lastly believes the proposed non-substantive clarifying changes will alleviate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and

through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated Distributors of BZX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of BZX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more for those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to BZX Options Top, or any of the Exchange's data feeds, as described above. Also as described above, there are numerous substitute products offered by other national securities exchanges, as well as OPRA. Because

market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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 Act²⁶ and paragraph (f) of Rule 19b-4²⁷ 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 (<http://www.sec.gov/rules/sro.shtml>); or

²⁶ 15 U.S.C. 78s(b)(3)(A).

²⁷ 17 CFR 240.19b-4(f).

- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2023-016 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-2023-016. 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 (<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-2023-016 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.²⁸

Sherry R. Haywood,
Assistant Secretary.

²⁸ 17 CFR 200.30-3(a)(12).