

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 92168; File No. SR-CboeBZX-2021-043)

June 14, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Open-Close Data 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 June 1, 2021, 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 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Open-Close Data fees. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 its Fees Schedule to (i) adopt an academic discount for its historical End-of- Day Open-Close and Intraday Open-Close data and (ii) offer a free trial during the months of June and July 2021 for an ad-hoc request of three (3) historical months of Intraday Open-Close historical data to all Members and non-Members who have never before subscribed to the Intraday Open-Close historical files.

By way of background, the Exchange historically offered Open-Close Data, which is an end-of-day volume summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), price, and transaction type (opening or closing) ("End-of-Day Open-Close Data"). The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Open-Close Data is proprietary BZX Options trade data and does not include trade data from any other exchange. It is also a historical data product and not a real-time data feed. The recently adopted Intraday Open-Close Data provides similar information to that of Open-Close Data but is produced and updated every 10 minutes during the trading day. Data is captured in "snapshots" taken every 10 minutes throughout the trading day and is available to subscribers within five minutes of the conclusion of each 10-minute period.³ The Intraday Open-Close Data provides a volume

³ For example, subscribers to the intraday product will receive the first calculation of

summary of trading activity on the Exchange at the option level by origin (customer, professional customer, broker-dealer, and market maker), side of the market (buy or sell), and transaction type (opening or closing). The customer and professional customer volume are further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The Intraday Open-Close Data is also proprietary BZX Options trade data and does not include trade data from any other exchange. Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., makes the Open-Close Data and Intraday Open-Close Data available for purchase to Members and non-Members on the LiveVol DataShop website (datashop.cboe.com). Customers may currently purchase End-of-Day Open-Close Data on a subscription basis (\$500 per month) or by ad hoc request for a specified historical month (\$400 per request per month). Customers may also purchase Intraday Open-Close Data on a subscription basis (\$1,500 per month or \$18,000 per year) or by ad hoc request for a specified historical month (\$750 per request per month).

The Exchange now proposes to adopt an academic discount for ad-hoc requests of historical months of these data sets. Specifically, the Exchange proposes to charge qualifying academic purchasers \$750 per year for the first year (instead of \$4,800 per year) for historical End-of-Day Open-Close Data and \$1,500 per year for the first year (instead of \$9,000 per year) for historical Intraday Open-Close Data. Additional months after the first year may be purchased separately and will be assessed a prorated amount based on the yearly rate (i.e., \$62.50 per month for historical End-of-Day Open-Close and \$125 per month for historical Intraday Open-

intraday data by approximately 9:42 a.m. ET, which represents data captured from 9:30 a.m. to 9:40 a.m. Subscribers will receive the next update at 9:52 a.m., representing the data previously provided together with data captured from 9:40 a.m. through 9:50 a.m., and so forth. Each update will represent the aggregate data captured from the current "snapshot" and all previous "snapshots."

Close). Particularly, the Exchange believes that academic institutions and researchers provide a valuable service for the Exchange in studying and promoting the options market. Though academic institutions and researchers have need for granular options data sets, they do not trade upon the data for which they subscribe. The Exchange believes the proposed reduced fee for qualifying academic purchasers of historical End-of-Day Open-Close Data and Intraday Open-Close Data will encourage and promote academic studies of its market data by academic institutions. In order to qualify for the academic pricing, an academic purchaser must be 1) an accredited academic institution or member of the faculty or staff of such an institution, 2) that will use the data in independent academic research, academic journals and other publications, teaching and classroom use, or for other bona fide educational purposes (i.e. academic use). Furthermore, use of the data must be limited to faculty and students of an accredited academic institution, and any commercial or profit-seeking usage is excluded. Academic pricing will not be provided to any purchaser whose research is funded by a securities industry participant. LiveVol subscriber policies will reflect the academic discount program, and academic users interested in qualifying will be required to submit a brief application. LiveVol Business Development will have the discretion to review and approve such applications and request additional information when it deems necessary.

The Exchange notes that another exchange currently offers an academic discount for a similar data feed.⁴ Additionally, the Exchange's affiliate Cboe Exchange, Inc. ("Cboe Options") offers an academic discount for historical End-of-Day Open-Close and Intraday Open-Close Data products.⁵ The Exchange recognizes the high value of academic research and educational

⁴ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A., Nasdaq ISE Open/Close Trade Profile Intraday.

⁵ See Cboe Options Fees Schedule, Livevol Fees, Open Close Data.

instruction and publications, and believes that the proposed academic discount for historical End-of-Day Open-Close Data and Intraday Open-Close Data will encourage the promotion of academic research of the options industry, which will serve to benefit all market participants while also opening up a new potential user base among students. Finally, the Exchange notes that academic purchasers' ad hoc requests of historical End-of-Day Open-Close and Intraday Open-Close Data would be educational in use and purpose, and not vocational.

The Exchange next seeks to adopt a free trial for historical ad hoc requests for Intraday Open-Close Data for new purchasers. Particularly, the Exchange proposes to adopt a free trial available during the months of June and July 2021 to provide up to three (3) historical months of Intraday Open-Close Data to any Member or non-Member that has not previously subscribed to this offering.⁶ The Exchange believes the proposed trial will serve as an incentive for new users to start purchasing Intraday Open-Close historical data. More specifically, the Exchange believes it will give potential subscribers the ability to use and test the data offering before signing up for additional months. The Exchange also notes another exchange offers a free trial for new subscribers of a similar data product.⁷ Lastly, the purchase of Intraday Open-Close historical data is discretionary and not compulsory.

⁶ For example, if a Member or non-Member that has never made an ad-hoc request for a specified month of Intraday Open-Close historical data wishes to purchase Intraday Open-Close Data for the months of January, February and March 2021 during the month of June 2021, the historical files for those months would be provided free of charge. If a new user wishes to purchase Intraday Open-Close historical data for the months of January, February, March and April 2021 during the month of June 2021, then the data for January, February and March 2021 would be provided free of charge, and the new user would be charged \$1,000 for the April 2021 historical file.

⁷ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A., Nasdaq ISE Open/Close Trade Profile End of Day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁸ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Intraday Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act¹⁰ in particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

In particular, the Exchange believes that the discount for qualifying academic purchasers of the ad hoc historical End-of-Day Open-Close and Intraday Open-Close Data is reasonable because academic users are not able to monetize access to the data as they do not trade on the data set. The Exchange believes the proposed discount will allow for more academic institutions and faculty members to purchase historical End-of-Day Open-Close and Intraday Open-Close Data, and, as a result, promote research and studies of the options industry to the benefit of all market participants. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all academic users that submit an application and meet the accredited academic institution or faculty member and academic use

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(4).

criteria. As stated above, qualified academic users will subscribe to the data set for educational use and purposes and are not permitted to use the data for commercial or monetizing purposes, nor can qualify if they are funded by an industry participant. As a result, the Exchange believes the proposed discount is equitable and not unfairly discriminatory because it maintains equal treatment for all industry participants or other subscribers that use the data for vocational, commercial or other for-profit purposes.

The Exchange also believes that the proposed free trial for any Member or non-Member who has not previously purchased Intraday Open-Close historical data is reasonable because such users would not be subject to fees for up to 3 months' worth of Intraday Open-Close historical data. The Exchange believes the proposed free trial is also reasonable as it will give potential subscribers the ability to use and test the Intraday Open-Close historical data prior to purchasing additional months and will therefore encourage and promote new users to purchase the Intraday Open-Close historical data. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who have not previously purchased Intraday Open-Close historical data. Lastly, as noted above, another exchange offers a free trial to new users for a similar data product¹¹ and purchase of this data product is discretionary and not compulsory.

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 Exchange does not believe that the proposed rule change will impose any burden on intramarket

¹¹ See Nasdaq ISE, Options 7 Pricing Schedule, Section 10A., Nasdaq ISE Open/Close Trade Profile End of Day.

competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change relating to the academic discount will apply to all qualifying academic purchasers uniformly. While the proposed fee reduction applies only to qualifying academic purchasers, academic purchasers' research and publications as a result of access to historical market data benefits all market participants. The Exchange also does not believe that the proposed rule change relating to the free trial will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will apply to all Members and non-Members who have never made an ad-hoc request to purchase Intraday Open-Close historical data. Moreover, purchase of Intraday Open-Close historical files is discretionary and not compulsory.

The Exchange also does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies only to the Exchange. Furthermore, another exchange currently offers similar historical data to academic users at a discounted price as well as a similar free-trial period for similar data.¹²

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 is effective upon filing pursuant to Section 19(b)(3)(A)¹³ of

¹² Id.

¹³ 15 U.S.C. 78s(b)(3)(A).

the Act and subparagraph (f)(2) of Rule 19b-4¹⁴ thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁵ of the Act 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2021-043 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.

¹⁴ 17 CFR 240.19b-4(f)(2).

¹⁵ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-CboeBZX-2021-043. This file number should be included on the subject line if e-mail 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, D.C. 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-2021-043 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).