

UNITED STATES OF AMERICA  
before the  
SECURITIES AND EXCHANGE COMMISSION

In the Matter of  
CBOE BZX EXCHANGE, INC., CBOE  
EXCHANGE,  
INC., CBOE C2 EXCHANGE, INC., and CBOE  
EDGX  
EXCHANGE, INC.

Admin. Proc. File No. 3-21779

OPERATING COMMITTEE'S SUR-REPLY TO CBOE'S MERITS BRIEF SUPPORTING  
ITS APPLICATION FOR REVIEW

The Operating Committee of the Options Price Reporting Authority ("OPRA") respectfully submits this sur-reply to address new arguments and factual misstatements in Cboe's reply in support of its merits brief. As OPRA explained in its Opposition Brief, information is not "equally accessible" through a full-streaming subscription compared to usage-based queries. Usage-based access is not equivalent to continuous streaming access, and OPRA's Opposition Brief detailed the material differences between these products. Cboe's reply contains inaccuracies about the market for proprietary data products, the OPRA consolidated data stream, and OPRA's interpretation of "equally accessible" that require correction.

OPRA has consistently explained that Cboe's interpretation effectively reads "equally" out of the OPRA Plan. Cboe now claims, for the first time, that adding "equally" to "accessible" merely guards against purely theoretical access, such as a firm claiming that internet connectivity means OPRA is available. That framing exposes the flaw: under Cboe's view, a firm could maintain a usage-based connection to OPRA while relying entirely on Cboe's

full-streaming product and never querying OPRA, rendering OPRA access purely theoretical. A query-based product does not require a query. A firm never has to request a quote from OPRA and can completely replace the product with Cboe's streaming data product. In other words, its use of OPRA is purely theoretical, exactly what Cboe claims "equally accessible" is designed to prevent.<sup>1</sup>

Cboe also claims that if OPRA is correct—that access to a proprietary streaming product requires receipt of the full-streaming consolidated feed—"no rational market participant" would subscribe to both. That is incorrect. Market participants routinely take multiple feeds, and latency-sensitive users often subscribe to both because OPRA's consolidation introduces latency that proprietary feeds avoid. Additionally, proprietary feeds contain information beyond what is available through the consolidated feed. The real obstacle is pricing: Cboe seeks to charge potential subscribers a level that many customers are unwilling to pay where they already receive the consolidated feed.

Cboe further argues there is no support for OPRA's concern that its interpretation would disrupt OPRA's funding mechanism. An effect on OPRA's funding is obvious: Cboe's interpretation would allow market data subscribers to replace their use of OPRA's full-streaming subscription with Cboe's full-streaming subscription, with no guarantee that the market participant would utilize the OPRA feed at all. But more importantly, the absence of any analysis of funding impact underscores the problem. Had Cboe's interpretation been

<sup>1</sup> Cboe attempts to obfuscate the issue by claiming that OPRA's interpretation creates line-drawing issues, in particular related to bandwidth. But no such line-drawing issues exist. OPRA and Cboe have consistently agreed that there are two types of products providing different levels of access: a usage-based system and a full-streaming subscription. The amount of bandwidth utilized by the products only demonstrates the different levels of data access. Cboe's full-streaming subscription versus a Cboe query-based system would have significantly different bandwidth requirements, just like OPRA's full-streaming subscription has much higher bandwidth requirements than its query-based system. This difference simply highlights that the two products do not provide equal access to the data.

advanced through a public rule filing, one would expect robust evaluation of the effects on OPRA's funding and consistency with the public interest. When the "equally accessible" language was added to the OPRA Plan in 2001 and expanded in 2003, there was no discussion of funding implications—unsurprising, because no one contemplated such effects, which indicates Cboe's reading was not considered. Cboe's reliance on a single statement that the Commission engaged in "careful review" is insufficient to show deliberate consideration of financial impacts. A bare assertion of "careful review" does not demonstrate the reasoned decision-making modern administrative law requires regarding OPRA's funding mechanism.<sup>2</sup>

Finally, Cboe argues that OPRA "improperly substitutes a technical focus on data delivery for the Plan's actual standard of functional accessibility." But delivery architecture is inseparable from functionality. While both streaming and usage-based products "provide access," they confer materially different capabilities. As Cboe itself states, "the usage-based subscription allows the user to query for the options data it needs; the full-streaming subscription continuously transmits all OPRA consolidated market data to the user."<sup>3</sup> Any assessment of "equal" access must account for these delivery differences.

Based on the analysis contained in OPRA's opposition as well as the above analysis, the Commission should deny Cboe's petition.

<sup>2</sup> See *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) ("One of the basic procedural requirements of administrative rulemaking is that an agency must give adequate reasons for its decisions. The agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made. That requirement is satisfied when the agency's explanation is clear enough that its path may reasonably be discerned. But where the agency has failed to provide even that minimal level of analysis, its action is arbitrary and capricious and so cannot carry the force of law.") (internal quotations and citations omitted).

<sup>3</sup> Applicants' Merits Brief in Support of its Application for Review ("Applicants' Brief"), pp. 6-7.

Dated: November 14, 2025

Respectfully Submitted,

/s/ James P. Dombach

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**CERTIFICATE OF SERVICE**

I, James Dombach, certify that on this day of November 14, 2025, I caused a copy of the foregoing to be filed through the SEC's eFAP system and served by electronic mail on:

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Dated: November 14, 2025

**CERTIFICATE OF COMPLIANCE**

I, James P. Dombach, certify that this Sur-reply to Cboe's Brief Supporting Exercise Of Commission Review Under Rule 608(d), complies with the length limitations set forth in the Securities and Exchange Commission's Order. I have relied on the word count feature of Microsoft Office for Word 365 in verifying this brief contains 1,125 words.

By:     /s/ James P. Dombach    

James P. Dombach  
Dated: November 14, 2025

**17 C.F.R. § 201.151(e) Certificate**

I, James P. Dombach, pursuant to 17 C.F.R. § 201.151(e)(3), certify that this Sur-reply to Cboe's Brief Supporting Exercise Of Commission Review Under Rule 608(d), does not contain sensitive personal information as defined in 17 C.F.R. § 201.151(e).

By:       /s/ James P. Dombach      

James P. Dombach  
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