

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

**CBOE BZX EXCHANGE, INC., CBOE EXCHANGE, INC., CBOE C2 EXCHANGE,  
INC., AND CBOE EDGX EXCHANGE, INC.’S MOTION FOR EXPEDITED ENTRY OF  
A BRIEFING SCHEDULE**

Cboe BZX Exchange, Inc., Cboe Exchange, Inc., Cboe C2 Exchange, Inc., and Cboe EDGX Exchange, Inc. (collectively, “Cboe”) respectfully submit this motion for expedited entry of a briefing schedule.

On September 29, 2023, Cboe filed with the Securities and Exchange Commission (the “Commission”) an application (the “Application”) for review of an action taken by the Options Price Reporting Authority (“OPRA”) Management Committee pursuant to Rule 608(d)(1) of Regulation NMS of the Securities Exchange Act of 1934. *See* 17 C.F.R. § 242.608(d). The Commission acknowledged the filing on October 4, 2023 and, on October 12, 2023, issued an order directing OPRA to file a certified copy of the record, granting Cboe the opportunity to supplement the record, and stating that “[a] separate order directing and scheduling the filing of briefs will follow in due course.” OPRA filed the certified record on October 18, 2023, and because Cboe had no opportunity to comment on the certified record OPRA filed, Cboe timely filed a supplemental record on November 1, 2023.

By this motion, Cboe respectfully requests that the Commission expeditiously enter an order setting forth a briefing schedule that directs the parties to brief the merits of Cboe's Rule 608(d) appeal. This matter requires prompt resolution to advance the public interest and maintain fair and orderly markets. Recently, OPRA adopted an interpretation of the Equivalent Access Provision in its SEC-approved Plan that requires users of any options exchange proprietary data feed *to also receive* the full streaming, real-time OPRA data feed at the same time and on the same device. That interpretation ignores that users can also receive usage-based access which, alongside a proprietary data feed, provides the ability to query real-time OPRA data (versus the requirement of a subscription to the full streaming, real-time OPRA data feed). As described in Cboe's Application, a requirement to receive the full OPRA data feed may be cost prohibitive for certain market participants and could therefore have the practical effect of denying choice for certain data subscribers.

Similarly, OPRA's limiting interpretation is contrary to the plain terms of the Plan and undermines participation in the options market by retail investors and others who require access to affordable and reliable real-time market data. This is because Cboe understands that many investors do not require the full volume of OPRA data, may not have the technological capabilities to process the full OPRA feed, and may be unable to afford the full streaming, real-time OPRA data feed subscription. As a result, OPRA's erroneous interpretation *increases* costs without a corresponding benefit and undermines an equitable and inclusive options market for investors. Underscoring the need for prompt action by the Commission, other OPRA members have already sought to amend their proprietary data fees while using OPRA's erroneous interpretation of the Equivalent Access Provision as a justification. *See SR-PHLX-2023-51*, at \*9-10 (citing the Equal Access Provision of the OPRA Plan and implicitly invoking an

interpretation requiring access to full, real-time streaming feed for OPRA data which “customers may choose to rely on ... in lieu of purchasing PHLX data” in relation to appropriate fee structures).

Given the need for expeditious resolution of this matter, Cboe respectfully requests that the Commission enter the following proposed briefing schedule:

- Opening brief of Cboe due 30 days after the Commission enters a briefing schedule;
- Opposition brief of OPRA due 30 days after the filing of Cboe’s opening brief;
- Reply brief of Cboe due 14 days after the filing of OPRA’s opposition brief.

The above briefing schedule will allow the Commission to expeditiously consider the merits of Cboe’s appeal and thus place the Commission in the best position to ensure that OPRA’s plan guarantees fair, competitive, and non-discriminatory access to essential market data for all investors.

Cboe proposed a joint briefing schedule approach to counsel for OPRA. Counsel for OPRA declined, taking the position that a scheduling order is not appropriate at this stage.

Cboe respectfully requests that the Commission enter the expedited briefing schedule proposed above.

Dated: December 1, 2023

Respectfully Submitted,

/s/ Kelly P. Dunbar

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CERTIFICATE OF SERVICE

I, Kelly P. Dunbar, certify that on this day of December 1, 2023, 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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By eFAP: [www.sec.gov/eFAP](http://www.sec.gov/eFAP)

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By: /s/ Kelly P. Dunbar

Kelly P. Dunbar  
Dated: December 1, 2023