

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-105301; File No. SR-CBOE-2026-040]**

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule to Codify a User Fee Exemption and the Amended Definition of “Non-Display Usage” in its Fee Schedule**

April 23, 2026.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 21, 2026, Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) 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 Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to amend its Fee Schedule to codify a User fee exemption and the amended definition of “Non-Display Usage” in 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 Commission’s website (<https://www.sec.gov/rules/sro.shtml>), the Exchange’s website ([https://www.cboe.com/us/options/regulation/rule\\_filings/bzx/](https://www.cboe.com/us/options/regulation/rule_filings/bzx/)), and at the principal office of the Exchange.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## **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 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 codify (i) an existing User Fee exemption to the Market Data section of its Fee Schedule and (ii) the amended definition of “Non-Display Usage” under the Market Data section of its Fee Schedule.<sup>3</sup> As discussed further below, both the User Fee exemption and the amended definition of Non-Display Usage are currently contained in the Cboe Global Markets North American Data Policies, the Exchange now proposes to codify both concepts in its Fee Schedule.

First, the Exchange proposes to codify that Controlled Distributors, are exempt from Display Usage fees<sup>4</sup> for the market data products listed on the Exchange’s Fee Schedule (each, a “Data Product”) where the sole purpose of receiving the data is for software development,

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<sup>3</sup> The Exchange initially submitted the proposed rule change on April 1, 2026 (SR-CBOE-2026-030). On April 13, 2026, the Exchange withdrew that filing and submitted SR-CBOE-2026-031. On April 21, 2026, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> Display Usage means the access to and/or use of a Market Data product by User via a graphical user interface, application or other medium which displays data. See Cboe Global Markets North American Data Policies. The Exchange proposes to codify the definition of “Displayed Usage” in the Definitions section of the Market Data Fees schedule in the Exchange’s Fees Schedule for transparency and clarity. Display Usage fees refer to Professional and Non-Professional User fees, as well as Enterprise or Digital Media fees, that are assessed for the Exchange Market Data products set forth in the Exchange’s Fee Schedule, as applicable.

quality assurance, testing, sales support relating to redistribution, or for technical monitoring of systems using a Product and not in support of other commercial/business functions (collectively, the “Permitted Purposes). In connection with codifying the Display Usage exemption, the Exchange also proposes to codify the definitions of Controlled Distributor, Display Usage and Uncontrolled Distributor<sup>5</sup> within its Fee Schedule for clarity; both definitions currently exist within the Cboe North American Data Policies. The Exchange has previously applied the User Fee exemption, and while there is no substantive change to how the Exchange applies this, it proposes to formally codify this practice to be within its Fee Schedule.

By way of background, Controlled Distributors both (i) provide data to a User and (ii) control the entitlements of and display of information to such User.<sup>6</sup> Meaning, Controlled Distributors entitle individual Users to view the data on a pre-existing Display application. Controlled Distributors are charged with tracking the Users which it enables and, is assessed the appropriate corresponding Professional and/or Non-Professional user fees, as applicable.<sup>7</sup> The Exchange now proposes to specify in its Fee schedule that when a Data Product is used for a Permitted Purpose, Users shall not be charged a Display Usage fee.

Second, the Exchange also proposes to codify the amended definition of “Non-Display Usage” as any method of accessing, or facilitating access to, a Market Data product that involves access or use by a machine or automated device for a purpose that is not solely in support of

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<sup>5</sup> Uncontrolled Distributors are defined as External Distributors that do not control the entitlements of and display of information to its Users. See Cboe Global Markets North American Data Policies. The Exchange proposes to codify the definition of “Uncontrolled Distributors” in the Definitions section of the Market Data Fees schedule in the Exchange’s Fees Schedule for transparency and clarity.

<sup>6</sup> See Cboe Global Markets North American Data Policies. The Exchange proposes to codify the definition of an “Controlled Distributor” in the Definitions section of the Market Data Fees schedule in the Exchange’s Fees Schedule for transparency and clarity.

<sup>7</sup> See Cboe Options Fee Schedule. As noted above, Display Usage fees are assessed at different rates depending on (i) if the User is a Professional user or a Non-Professional and (ii) for the specific Data Product as set for the Exchange’s Market Data.

display for a natural person or persons.<sup>8</sup> The Exchange previously applied the prior definition of Non-Display Usage that was in the Cboe Global Markets North American Data Policies. This definition stated that Non-Display Usage meant any method of accessing a Market Data product that involved access or use by a machine or automated device without access or use of a display by a natural person or persons. This definition was also previously in the Exchange’s affiliated equities exchanges fee schedules.

The proposed definition adopted in Cboe Global Markets North American Data Policies (effective April 1, 2026) now states that, Non-Display Usage means any method of accessing, or facilitating access to, a Market Data product that involves access or use by a machine or automated device for a purpose that is not solely in support of display for a natural person or persons. As discussed further below, the proposed definition is intended to capture changes in the evolving landscape of technology with firms more frequently leveraging Large Language Models (“LLMs”).

In conjunction with the proposed revision to the Non-Display Usage definition, the Exchange proposes to codify this amended, up-to-date version to be within its Fee Schedule. The Exchange’s affiliated options and equities exchanges are also codifying and amending this definition (as applicable) in their respective fee schedules.

## 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

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<sup>8</sup> The term “Non-Display Usage” is defined in Cboe Global Markets’ North American Data Policies. See Cboe Global Markets North American Data Policies. The term is also defined in the fee schedules of the Exchange’s affiliated equities exchanges. See e.g., Cboe BYX Equities Fee Schedule. The Exchange now proposes to codify the definition of “Non-Display Usage” in the Definitions section of Market Data Fees in the Exchange’s Fees Schedule for transparency and clarity. The Exchange seeks to adopt the definition of “Non-Display Usage” contained in Cboe Global Markets’ North American Data Policies.

Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>9</sup> Specifically, the Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>10</sup> 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### User Fee Exemption

In particular, the proposed exemption is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. For example, Display Usage of Data Products solely for the enumerated Permitted Purposes does not directly generate revenue. As such, the Exchange believes it equitable to not charge for such usage. Other exchanges and market data offerings have also taken a similar approach when charging for these uses<sup>12</sup> and such exemptions for these purposes are generally accepted within the industry to not be fee liable. The Exchange believes that codifying this exemption is reasonable as no fees will be assessed where there are Permitted Purposes.

The Exchange notes that all of the Data Products are 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 these data products available. Distributors (including vendors) and Users can therefore discontinue use at any time and for any reason, including due to an assessment of

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> See e.g., MIAX Exchange Group Market Data Policies, Section 10 and UTP Plan Administration Data Policies, Administrative Usage Policy – Internal Use Only.

the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

Additionally, the Exchange believes the proposed exemption is equitable and non-discriminatory in that it applies uniformly to similarly situated market participants (i.e., all Controlled Distributors whose Users use a Data Product solely for a Permitted Purpose). Further, the Exchange notes that it is equitable and not unfairly discriminatory for this to only apply to Display Usage fees of Controlled Distributors, as Uncontrolled Distributors only distribute Data Products where Display Usage fees are not applicable.

The Exchange believes that codifying the definitions of Display Usage Controlled Distributor, and Uncontrolled Distributor in its Fee Schedule provides further clarity for market participants. With all relevant terms for the Display Usage exemption defined within the Fee Schedule, market participants will be better able to ascertain if this exemption is applicable to them and the specific terms of this exemption.

#### Non-Display Usage Definition

In particular, the codification of the amended definition of “Non-Display Usage” contained in Cboe Global Markets’ North American Data Policies is designed to (i) provide transparency by including this definition in the Fee Schedule directly (as opposed to only having this within the Cboe Global Markets North American Data Policies) and (ii) provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange Data through the proposed amendments to the prior definition that was applied (and was previously in the Cboe Global Markets North American Data Policies).

Specifically, the amended definition of Non-Display Usage means any method of accessing, or facilitating access to, a Market Data product that involves access or use by a machine

or automated device for a purpose that is not solely in support of display for a natural person or persons. As noted above, the prior definition that was used (and was contained in Cboe Global Markets' North American Data Policies) stated that: Non-Display Usage means any method of accessing a Market Data product that involves access or use by a machine or automated device without access or use of a display by a natural person or persons.

The codification of the amended definition of "Non-Display Usage," and other terms,<sup>13</sup> are intended to add transparency and clarity to the Exchange's Fee Schedule. The proposed amended definition is intended to capture changes in the evolving landscape of technology with firms more frequently leveraging Large Language Models ("LLMs"). Firms that facilitate the transmission of Data Products into "black box" solutions (which include LLMs), may now need to obtain non-display licensing for usage of the Data Product.

For example, the prior definition in Cboe Global Markets North American Data Policies did not include "facilitating access to" in the Non-Display Usage definition. This meant that if a firm directly ingested a Data Product for the purpose of feeding the data directly into an automated trading strategy, it would be required to procure a license for Non-Display. However, under the prior definition, a firm that ingested a Data Product for training or operating a LLM or that facilitated transmission of a Data Product may not explicitly fall under the definition of Non-Display Usage, despite the firm ingesting the data for a non-display purpose. In order to facilitate more equitable outcomes between firms, the Exchange proposes to include this in its amended definition to ensure that Non-Display Usage better covers the intended audience.

The intent of this revised definition is not to introduce a new or novel concept, it is instead intended to provide further clarity on firms that should be covered under this license with

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<sup>13</sup> Supra notes 4, 5 and 6.

new uses of Data Products in mind. The Exchange notes that this update better aligns itself with industry standards as well.<sup>14</sup>

The Exchange notes that all the Data Products are 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 these data products available. Distributors (including vendors) and Users can therefore discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers.

Additionally, the Exchange believes the amended definition of “Non-Display Usage” that it proposes to include in its Fee Schedule is equitable and non-discriminatory in that it applies uniformly to similarly situated market participants. Adding this definition to the Fee Schedule only provides further clarity and transparency for market participants. As noted above, the Exchange’s affiliated equities exchanges already have a “Non-Display Usage” definition codified within their respective schedules. In conjunction with this filing, the Exchange’s affiliated equities exchanges are also proposing to amend the existing Non-Display Usage definition within their fee schedules to align with the revised Cboe North America Market Data Policies and with the Exchange’s proposed definition. The Exchange’s affiliated options exchanges are also proposing to adopt this updated definition within their fee schedules as well.

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<sup>14</sup> See e.g., NASDAQ Data – Artificial Intelligence Policy ([Market Data - Data\\_AI\\_Policy-NASDAQ.pdf - All Documents](#)), stating that “Any use of or access to Nasdaq Information including for training of AI models must strictly adhere to the terms of the license governing access to such Nasdaq Information, including maintaining appropriate licenses with redistributors and service facilitators. This includes any use that would subject the data to the following environments outside the license.”

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 proposed rule changes are grounded in the Exchange’s efforts to compete more effectively (e.g., by updating its definition of Non-Display to conform with changes in the industry). As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intramarket competition, as the exemption applies uniformly to all Controlled Distributors, and in turn, the ultimate end Users are not utilizing the applicable Data Product(s) for commercial or business purposes. Further, the proposed change to codify the User Fee exemption is not designed to address any competitive issues. Indeed, this proposal does not create an unnecessary or inappropriate inter-market burden on competition because it merely clarifies the Exchange’s internal process (as stated in the Cboe Global Markets North American Data Policies) on applying the User Fee exemption.

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 Act<sup>15</sup> and paragraph (f) of Rule 19b-4<sup>16</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change

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<sup>15</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>16</sup> 17 CFR 240.19b-4(f).

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](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2026-040 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-CBOE-2026-040. 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 filing 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-CBOE-2026-040 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.<sup>17</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>17</sup> 17 CFR 200.30-3(a)(12).