

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86671; File No. SR-CboeBZX-2019-070)

August 14, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule to Institute a Derived Data API Service

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 August 1, 2019, 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, 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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule to institute a Derived Data API Service. The text of the proposed rule change is attached as Exhibit 5 [sic].

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.

¹ 15 U.S.C. 78s(b)(1).

² 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 purpose of the proposed rule change is to implement a new pricing structure that would reduce fees charged to Distributors that distribute Derived Data through an Application Programming Interface (“API”) – i.e., the Derived Data API Service (the “Program”). “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. The Exchange currently offers a Derived Data White Label Service Program that allows Distributors to benefit from discounted fees when distributing Derived Data taken from BZX Top, which is a proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange.³ The current program is limited to the distribution of Derived Data to subscribers within a White Label Service which is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. The Derived Data API Service would supplement the current Derived

³ See Rule 13.8(c) [sic].

Data White Label Service Program by offering discounted fees for Distributors that make Derived Data available through an API,⁴ thereby allowing Distributors to benefit from reduced fees when distributing Derived Data to subscribers that establish their own platforms rather than relying on a hosted display solution.

Current Fee Structure

The Exchange currently charges a fee of \$2,500 per month for external distribution of BZX Top. In addition, external distributors of BZX Top are charged a fee of \$4 per month for each Professional User and \$0.10 per month for each Non-Professional User. The Exchange also offers special pricing for Derived Data provided through a White Label Service, as mentioned above. This service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor.⁵ The White Label Service Program can be used for a number of different purposes, including the display of information or data, or the creation of derivative instruments, such as swaps,⁶ swaptions,⁷ or contracts for difference,⁸ but is unavailable to distributors that make such information available through an API. Such distributors are not eligible for discounted Derived Data pricing today, and

⁴ With the proposed introduction of the Derived Data API Service, the Exchange would bring together the BZX Top Derived Data White Label Service and Derived Data API Service under the common heading “Financial Product Distribution Program.” The Financial Product Distribution Program would encompass both of these products.

⁵ The Distributor maintains control of the application’s data, entitlements and display.

⁶ A swap is a derivative contract in which two parties agree to exchange financial instruments.

⁷ A swaption, or swap option, is an option to enter into a swap at a specified time.

⁸ A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

are instead liable for the fees normally applicable for the distribution of BZX Top, as listed at the beginning of this paragraph.

Discounted Fees for Derived Data API Service

As proposed, a Distributor that provides a Derived Data API Service for Derived Data taken from BZX Top would be liable for the following fees instead of the fees normally applicable for the distribution of BZX Top. Instead of the regular fee for external distribution, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (i.e., “External Subscribers”) that receive Derived Data from the Distributor through a Derived Data API Service. As proposed, Distributors would continue to be charged a fee of \$2,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers. Distributors that make Derived Data available to additional External Subscribers would benefit from discounted pricing based on the number of External Subscribers. Specifically, the external distribution fee would be lowered by 20% to \$2,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers, and further lowered another 20% to \$1,500 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers. As is the case under the Derived Data White Label Service, the External Subscriber Fee would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (i.e., 6 External Subscribers x \$2,000 each). The Exchange would continue to charge a monthly Professional User fee of \$4 per month for each Professional User that accesses Derived Data through an API Service. The current Non-Professional User fee of \$0.10 per month

would be eliminated when participating in the Derived Data API Service, further reducing costs for Distributors that provide access to such data to downstream investors.

With the proposed introduction of the Derived Data API Service, the Exchange would bring together the Derived Data White Label Service and Derived Data API Service under the common heading “Financial Product Distribution Program.” The Financial Product Distribution Program would encompass both of these products. Similar to the Derived Data White Label Service, the Derived Data API Service would be entirely optional, in that it applies only to Distributors that opt to use Derived Data from BZX Top to create an API Service, as described herein. It does not impact or raise the cost of any other Exchange product, nor does it affect the cost of BZX Top, except in instances where Derived Data is made available on an API Service. A Distributor that provides a White Label Service or API Service for Derived Data taken from BZX Top would be liable for the fees associated with the White Label Service or API Service instead of the fees normally applicable for the distribution of BZX Top. A Distributor that provides a White Label Service or API Service for BZX Top data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service or API Service would be liable for the fees normally applicable for the distribution of BZX Top.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the securities information processors (“SIPs”) to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National

securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange. In an effort to widen distribution to market participants that use equities market data to compute pricing for certain derivatives instruments, national securities exchanges including the Exchange, its affiliate, Cboe EDGX Exchange Inc., and The Nasdaq Stock Market LLC (“Nasdaq”) offer discounted pricing for Derived Data that is created using their top of book products. The Program would therefore compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,⁹ in general, and furthers the objectives of Section 6(b)(4),¹⁰ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹¹ Specifically, the proposed rule change supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. In addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹² which provides that any national securities

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(4).

¹¹ 15 U.S.C. 78k-1.

¹² See 17 CFR 242.603.

exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹³ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for one of its proprietary top of book data offerings through the introduction of a Derived Data API Service.

¹³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on API Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. The fees that are the subject of this rule filing are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors. The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. As mentioned above, Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. As a result, distributors of Derived Data do not need a consolidated view of the market across multiple exchanges, and generally purchase such data from a single exchange. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to BZX Top market data instead of competitor products. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Furthermore, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges,

including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an alternate fee structure for providing BZX Top market data to Distributors that make Derived Data available to External Subscribers via API Services. As proposed, if a Distributor uses an API Service to distribute Derived Data, the Distributor will be charged a fee that is tiered based on the number of External Subscribers that are provided access to that data instead of the higher fee normally charged for external distribution. The Exchange believes that this fee is equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of BZX Top. The Exchange believes that it is equitable and not unfairly discriminatory to begin providing discounted rates to Distributors that provide access to at least six External Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Exchange. The Exchange understands that Distributors that may provide this sort of API Service typically serve a relatively larger number of External Subscribers, and would therefore be able to meet the proposed threshold by providing Derived Data taken from BZX Top to those customers.

The Exchange would also continue to charge a small fee for Professional Users but would eliminate Non-Professional User fees for data provided under the Program. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily

discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

Furthermore, the proposed fees will only apply to Distributors that elect to participate in the Program by distributing Derived Data through an API Service. BZX Top market data 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. Distributors of BZX Top are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a While [sic] Label Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products.

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 these data products is constrained by: (i) competition among exchanges that offer similar data products, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen

equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an API. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting investors that are provided access to such data.

The proposed fees apply to data derived from BZX Top, which is subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and Nasdaq offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is proposing to expand the programs that it offers to include a Derived Data API Service, allowing additional market data customers to benefit from discounted pricing. The Exchange does not believe that the proposed price reduction for Derived Data offered through an API would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-

competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

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 Act¹⁴ and paragraph (f) of Rule 19b-4¹⁵ 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-070 on the subject line.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f).

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-2019-070. 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, 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-2019-070, 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

Jill M. Peterson
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).