

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92970; File No. SR-CboeBZX-2021-047)

September 14, 2021

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.22 to Introduce a Product to be known as “Cboe Premium Exchange Tools” and to Amend its Fee Schedule to Establish a Fee for a User Login that Elects to Subscribe to the Cboe Premium Exchange Tools

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 August 31, 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 Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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”) proposes to amend Rule 11.22 to introduce a new product to be known as “Cboe Premium Exchange Tools” and to amend its Fee Schedule to establish a fee for a user login that elects to subscribe to the Cboe Premium Exchange Tools. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

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/](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 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 Rule 11.22(b) to introduce a new product to be known as Cboe Premium Exchange Tools, as further described below, and to amend its Fee Schedule to adopt a monthly fee assessed to users that elect to subscribe to such Cboe Premium Exchange Tools, effective August 31, 2021.

Cboe Premium Exchange Tools

Currently, Members<sup>5</sup>, Sponsored Participants<sup>6</sup>, and service bureaus are leveraging certain value-added tools (i.e., Cboe Premium Exchange Tools) on the Exchange to obtain certain information free of charge. Particularly, Cboe Premium Exchange Tools offers an easily accessible internet-based tool that allows users access to certain execution information for their

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<sup>5</sup> See Exchange Rule 1.5(n).

<sup>6</sup> See Exchange Rule 1.5(x).

firm through a single interface. Now, the Exchange proposes to amend Rule 11.22(b) to describe the Cboe Premium Exchange Tools in its Rules. Specifically, proposed Rule 11.22(b) provides that the Cboe Premium Exchange Tools is a web-based tool designed to give a subscribing user the ability to track latency statics of the user's logical order entry ports or execution information of the Member or a Sponsored Participant of the Member. The proposed rule also provides that a user may obtain historical reports of such execution information, as further described below.<sup>7</sup> Cboe Premium Exchange Tools is currently comprised of the following three reports: (i) trade data report<sup>8</sup>, (ii) latency statistics report<sup>9</sup>, and (iii) volume history report.<sup>10</sup>

#### *Trade Data Report*

The trade data report offers the ability for a user to view and/or export its Member's and, if applicable, a Sponsored Participant of the Member, granular execution detail.<sup>11</sup> Specifically, the report currently includes the following information: date, time, Member identifier, clearing member identifier, session, order identification, symbol, side (i.e., buy, sell, sell short), price, quantity, capacity (e.g., agent, principal), liquidity indicator (i.e., adder or remover of liquidity), order type,<sup>12</sup> indicator as to whether order set or joined the national best bid or offer

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<sup>7</sup> All information available to Members as described herein is historical information.

<sup>8</sup> Trade Data Reports may be obtained by a Member, or if authorized to do so a Sponsored Participant.

<sup>9</sup> Latency Statistics Reports may be obtained by a Member, Sponsored Participant or service bureaus as it relates to their respective logical order entry ports.

<sup>10</sup> Volume History Reports may be obtained by a Member.

<sup>11</sup> Sponsored Participants may also subscribe to the Trade Data Report, provided that its Sponsoring Member provides the Exchange authorization to do so. Trade Data Reports provided to Sponsored Participants only include execution detail related to the Sponsored Participant.

<sup>12</sup> See Exchange Rule 11.9.

(“NBBO”),<sup>13</sup> and associated fee code(s). The information is provided in order to aid Members in conducting their own reconciliations and assist in report generation, and, unlike the Volume History Report, is available on an execution-by-execution basis.

#### *Latency Statistics Report*

The latency statistics report offers functionality to view latency statistics relating to logical order entry ports, including a Member’s orders, acknowledgements, and cancels, including roundtrip data from into the edge network device and back, which accounts for latency within the Exchange order gateways and matching engines. Specifically, the latency statistics report includes the following information: (i) the roundtrip time between the order entering the Exchange’s network and the time the order acknowledgement leaves the Exchange’s network, (ii) the roundtrip time between an order cancellation request and the time the order cancellation request acknowledgement leaves the Exchange’s network, (iii) the roundtrip time between an order entering the Exchange’s network and the time that the order appears on the Multicast PITCH feed, (iv) the roundtrip time for a Transmission Control Protocol (“TCP”)<sup>14</sup> message sent by the Exchange to be acknowledged by the Member, and (v) averages a Member can expect for items (i) through (iii) across their own ports and across the entire system (i.e., across all Members). A Member, service bureau, or Sponsored Participant may view the latency statistics for orders that they send to the Exchange through their own respective logical order entry ports. The information included in the latency statistics report is designed to give users insight into the performance characteristics of their logical order entry ports.

#### *Volume History Report*

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<sup>13</sup> Hidden orders that neither set or join the NBBO are identified as such within the report.

<sup>14</sup> TCP is a communications standard that enables application programs and computing devices to exchange messages over a network.

The volume history report provides users the functionality to view the Member's, high level volume history on the Exchange, as well as more granular added, removed, and routed orders at a per Tape and MPID level or a per security level for the purpose of tracking and measuring outcomes.<sup>15</sup> The tools offer functionality to allow a user to view aggregated volume history reports on behalf of the Member or a Sponsored Participant of the Member for the purpose of firm or client-level reporting, administration, and risk management.

#### Cboe Premium Exchange Tools Fee

The Exchange also proposes to adopt a fee applicable to users that subscribe to the proposed Cboe Premium Exchange Tools. Specifically, as proposed, the Exchange would assess a monthly fee of \$65 for each user login that subscribes to any of the reports and services that comprise the Cboe Premium Exchange Tools. As discussed above, Premium Exchange Tools provides users with an easily accessible tool that allows them to access certain execution and latency information from a single interface and provides such information in a convenient, user-friendly format. Further, a number of enhancements have recently been made to the various reports and services included in the Cboe Premium Exchange Tools. For example, the trade data report has recently been enhanced to provide timestamps with microsecond granularity for added detail on a per trade basis. Therefore, the Exchange believes the assessment of such a fee aligns with the additional value and benefits provided to users that choose to subscribe to the Cboe Premium Exchange Tools. The Exchange also believes that the proposal is appropriate to balance the Exchange resource requirements in creating, managing, and supporting the services and reports provided by the Cboe Premium Exchange Tools.

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<sup>15</sup> Information included in the Volume History Report includes all activity, including that executed on behalf of Sponsored Participants. Execution volume made on behalf of a Sponsored Participant is not delineated within the Volume History Report.

The Cboe Premium Exchange Tools fee will be assessed to a user for the entire month regardless of when the user receives access to the Premium Exchange Tools. If a user obtains or cancels a subscription to the Cboe Premium Exchange Tools on or after the first business day of the month, the user will be required to pay the entire Cboe Premium Exchange Tools fee for that month.

The Exchange anticipates a number of users will subscribe to the Cboe Premium Exchange Tools. It is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make the reports or services available and that potential subscribers may purchase it only if they voluntarily choose to do so. Further, the Exchange notes that other exchanges offer similar products.<sup>16</sup>

## 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 Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>17</sup> Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>18</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. The Exchange also believes the proposed rule change is consistent with the Section 6(b)(5)<sup>19</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to

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<sup>16</sup> See the “TradeInfo Fees” offered on the Nasdaq Stock Exchange (“Nasdaq”), Nasdaq BX, Inc. (“Nasdaq BX”), and the Nasdaq PHLX LLC (“Phlx”), each of which assess a fee of \$95 per user per month.

<sup>17</sup> 15 U.S.C. 78f(b).

<sup>18</sup> 15 U.S.C. 78f(b)(4).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>20</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposal to amend Rule 11.22(b) to provide for the Cboe Premium Exchange Tools is reasonable for several reasons. First, certain of the underlying information available via the Cboe Premium Exchange Tools is otherwise generally available to users. While the proposal provides a value-added service by setting forth such information in a user-friendly format, the underlying data included in the trade data report and volume history report contains general Member-specific execution information to which a Member would have access to without subscribing to Premium Exchange Tools, (e.g. via their own order entry ports which include Member-provided order instructions, exchange-sent acknowledgement messages, and drop copies). Moreover, the data included in the trade data report and volume history report is substantially similar to data offered in the Nasdaq TradeInfo tool, which provides detailed data on the status of orders executions, cancels and breaks, and generates reports for download, and allows the member to cancel or correct open orders.<sup>21</sup>

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<sup>20</sup>

Id.

<sup>21</sup>

See Securities and Exchange Act No. 90772 (December 22, 2020) 85 FR 86632 (December 30, 2020) (SR-NASDAQ-2020-088) (Proposed rule change describing the withdrawal of Nasdaq's QView product from sale and that the information included therein will continue to be available via TradeInfo).

















