

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94408; File No. SR-CboeBZX-2022-019)

March 14, 2022

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Modify the External Subscriber Fees Applicable to Cboe One Summary 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 March 10, 2022, 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 modify the External Subscriber fees applicable to Cboe One Summary Derived Data API Service. The text of the proposed rule change is provided in Exhibit 5.

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 Exchange proposes to modify fees charged to External Distributors that distribute Cboe One Summary Derived Data through an Application Programming Interface (“API”) - i.e., the Derived Data API Service, effective March 1, 2022.³

Background

By way of background, the Exchange offers a Financial Product Distribution Program (“Program”), under which a Distributor may subscribe to one of three Derived Data Service

³ The Exchange initially filed the proposed fee changes on March 1, 2022 (SR- BZX-2022-010). On March 10, 2022, the Exchange withdrew that filing and submitted this proposal.

options, White Label Service⁴, API Service⁵ or Platform Service⁶, each of which offers either BZX Top Data, which is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System⁷ or Cboe One Summary Data, which is a proprietary data product that provides the top of book quotations and execution information for all listed equity securities traded across the Exchange and its affiliated U.S. equities exchanges (the “Cboe equity exchanges”).⁸ Under the Program, regardless of the Service option selected by a Distributor, the Distributors receive the same real-time Exchange data (i.e., BZX Top or Cboe One Summary) as all other subscribers of such Exchange data. From the Exchange data, a Distributor may create “Derived Data”, which 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

⁴ A “White Label Service” 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 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. The Distributor maintains control of the application's data, entitlements and display.

⁵ An “API Service” is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

⁶ A “Platform Service” is a type of hosted display solution in which a Distributor provides derivative products to Platform Service Data Users within their infrastructure. The service allows Distributors to make Derived Data available as part of a platform, providing users remote access to derivative products based in whole or in part on Exchange Data.

⁷ See Exchange Rule 13.8(c).

⁸ See Exchange Rule 13.8(b). The Cboe One Summary external distribution fee is equal to the aggregate EDGX Top, BZX, Top, BYX Top, and EDGA Top fees external distribution fees.

that is a reasonable facsimile or substitute for Exchange data. Derived Data may be created by Distributors for a number of different purposes, as determined by the Distributor. The specific use of Exchange data is determined by the Distributor, as applicable fees do not depend on the purpose for placing the Derived Data under the Program.

Cboe One Summary Derived Data API Service External Subscriber Fees

The Derived Data API Service program offers discounted fees for Distributors that make Derived Data available through an API, 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). Instead of the regular flat fee for External Distribution of Exchange data, Distributors of Derived Data under the API Service are 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 and may benefit from discounted pricing based on the number of subscribers. Currently, Distributors under this program are charged a fee of \$5,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers; \$4,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers, and further lowered to \$3,000 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers. The Exchange now proposes to further reduce the distribution fees for Distributors of Cboe One Summary Derived Data through a Derived API Service. Particularly, the Exchange proposes to modify the External Subscriber fees as follows:

Number of External Subscribers	Current Fee	Proposed Fee
1 – 5	\$5,000	\$3,000

6 – 20	\$4,000	\$2,500
21 and above	\$3,000	\$2,000

The Exchange notes that the External Subscriber Fee is non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. To illustrate how the discount is applied, the Exchange has codified an example in the Fees Schedule under the notes section of the Derived Data API Service section, which it now proposes to update in connection with the proposed changes to the External Subscriber fees.⁹ Currently, the example provides that a Distributor providing Derived Data based on Cboe One Summary to six (6) External Subscribers that are API Service Platforms would be charged a monthly fee of \$24,000 (i.e., 6 External Subscribers x \$4,000 each). The Exchange proposes to update the example to provide that Distributor providing Derived Data based on Cboe One Summary to six (6) External Subscribers that are API Service Platforms would be charged a monthly fee of \$15,000 (i.e., 6 External Subscribers x \$2,500 each). The proposal to reduce the External Subscriber fees is designed to provide a price structure that is competitive and attract Distributors for its Cboe One Summary data offering through the Derived Data API Service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁰ in general, and furthers the objectives of Section 6(b)(4),¹¹ in particular, as

⁹ The Exchange notes that it inadvertently omitted appending three asterisks to the External Subscriber Fee in the “Cboe One Summary Derived Data API Service” table to reference the corresponding notes section that includes the summary as to how the discount is applied and seeks to update the Fees Schedule now to avoid potential confusion.

¹⁰ 15 U.S.C. 78f.

¹¹ 15 U.S.C. 78f(b)(4).

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.¹² 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,¹³ which provides that any national securities 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 16 registered national securities exchanges that trade U.S. equities and have the capability to offer associated top of book market data products to their customers.¹⁴ Additionally, two other

¹² 15 U.S.C. 78k-1.

¹³ See 17 CFR 242.603.

¹⁴ Competing top-of-book products include, Nasdaq Basic, BX Basic, PSX Basic, NYSE BQT, NYSE BBO/Trades, NYSE Arca BQT, NYSE Arca BBO/Trades, NYSE American BBO/Trades, NYSE Chicago BBO/Trades, IEX TOPS, MIAX PEARL Equities Top of Market Feed, and MEMX MEMOIR Top.

exchange families specifically offer similar consolidated top of book products that compete directly with Cboe One Summary.¹⁵ 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.”¹⁶ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional Distributors for its Cboe One Summary data offering through the Derived Data API Service.

The Exchange believes that the proposed change is reasonable as it lowers the existing External Subscriber fees and these fee reductions would continue to facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. As discussed, the Cboe One Summary data offering through the Derived Data API Service allows Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. Because Exchange data in this context is

¹⁵ Competing consolidated top of book products include Nasdaq Basic and NYSE BQT. As described on the Nasdaq website, available here: <http://www.nasdaqtrader.com/Trader.aspx?id=NASDAQBasic>, Nasdaq Basic is a “low cost alternative” that provides “Best Bid and Offer and Last Sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center, as well as trades reported to the FINRA Trade Reporting Facility (“TRF”).” As described on the NYSE website, available here: <https://www.nyse.com/market-data/real-time/nyse-bqt> NYSE Best Quote and Trades (BQT) “is a cost efficient, consolidated market data feed that provides a unified view of quotes and trades from NYSE, NYSE American, NYSE Arca, NYSE Chicago and NYSE National.”

¹⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

primarily purchased for the creation of Derived Data encompassing certain derivative instruments, Distributors do not require a consolidated view of the market across several exchanges, and will generally purchase such data from a single or select few exchange(s) for their purposes. As noted above, Cboe One Summary includes top of book quotation and transaction data across all four Cboe equity exchanges, which allows Distributors to create more meaningful Derived Data than that available from a single exchange's market data at a potentially reduced price.

The existence of alternatives to the Program therefore 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 top of book and/or consolidated top of book products and pricing programs for Derived Data.¹⁷ The availability of diverse competitive products promotes additional competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that the existing Derived Data API Service is not only constrained by competition but also ensures continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges. If a competing exchange were to charge less for a similar product than the Exchange charges under the existing fee structure, even as amended, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that further lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to Exchange market data instead of competitor products. While the Exchange has no

¹⁷ See generally, the Nasdaq Basic fees at <http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN>.

way of predicting with certainty the impact of the proposed changes, it anticipates up to two Distributors will create Derived Data from Cboe One Summary using the API Service.

Moreover, External Subscriber fees only apply to Distributors that elect to participate in the Program by distributing Derived Data from Cboe One Summary through an API Service. Cboe One Summary Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation purchase this data or to make this data available. Accordingly, Distributors can discontinue distributing at any time and for any reason, including due to an assessment of the reasonableness of fees charged, Cboe One Summary Derived Data under the API Service. Indeed, there are no Distributors who are currently subscribing to the API Service for Cboe One Summary Derived Data. Further, as discussed, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary consolidated top of book data products offered by other national securities exchanges,¹⁸ 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 also continues to provide an alternate, and as proposed, lower, fee structure for providing Cboe One Summary market data to Distributors that make Derived Data available to External Subscribers via API Services. If a Distributor uses an API Service to distribute Derived Data, the Distributor will still 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

¹⁸ Supra note 14.

Subscribers provided access to Derived Data through an API Service. Also, all Distributors that make Derived Data available to External Subscribers through an API Service will receive a discount compared to the current pricing applicable for external distribution of Cboe One Summary.¹⁹ The Exchange also believes its equitable and not unfairly discriminatory to provide incrementally higher discounted rates to Distributors that provide access to Derived Data to a greater numbers of Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Distributor.

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 competition among exchanges that offer similar data products, and pricing options, to their customers. Top of book data is broadly disseminated by competing U.S. 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 lowest priced 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 certain Derived Data through an API Service. The Exchange believes that this would facilitate greater access to

¹⁹ See Cboe BZX U.S. Equities Exchange Fee Schedule.

Exchange data and Derived Data, ultimately benefiting investors that are provided access to such data.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. The proposed fees would apply equally to external distributors of Cboe One Summary that make Derived Data available through the API Service option offered by the Exchange under the Program. The continued difference in fees under the Program as compared to the normal External Distribution fee for Cboe One Summary is appropriate given that External Subscribers and Users receive Derived Data, which by definition cannot be readily reverse-engineered to recreate Cboe One Summary data or used to create other data that is a reasonable facsimile or substitute for Cboe One Summary. The Exchange therefore believes that the proposed fees neither favor nor penalize one or more categories of market participants in a manner that would impose an undue burden on competition. Moreover, a number of national securities exchanges, including the Exchange and its affiliated Cboe U.S. equities exchanges offer pricing discounts for Derived Data today.²⁰ 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. Additionally, the Exchange is proposing to enhance the Program by reducing the fees for Cboe One Summary Derived Data. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that

²⁰ Supra note 16. See also Cboe BZX U.S. Equities Exchange Fee Schedule, Financial Product Distribution Program.

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

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 Act²¹ and paragraph (f) of Rule 19b-4²² 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-2022-019 on the subject line.

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 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-2022-019. 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, D.C. 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-2022-019 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.²³

J. Matthew DeLesDernier
Assistant Secretary

²³ 17 CFR 200.30-3(a)(12).