

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96673; File No. SR-CboeBZX-2023-001)

January 17, 2023

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule

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 January 3, 2023, 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. (the “Exchange” or “BZX Options”) proposes to amend 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 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

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

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

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 the Fee Schedule, effective January 3, 2023. The Exchange proposes to modify its market data fees for BZX Options Top.<sup>3</sup> Particularly, the Exchange proposes to modify the Professional and Non-Professional User Fees and the Enterprise Fee for BXZ Options Top.

The Exchange first proposes to reduce the Professional and Non-Professional User fees for BZX Options Top. The Exchange currently charges Internal Distributors and External Distributors that redistribute any of the BZX Options Data Feeds different fees for their Professional Users<sup>4</sup> and Non-Professional Users.<sup>5</sup> The Exchange currently assesses a monthly fee

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<sup>3</sup> BZX Options Top is an uncompressed data feed that offers top of book quotations and execution information based on options orders entered into the System.

<sup>4</sup> A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

<sup>5</sup> A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

for Professional Users of \$30.00 per User and a monthly fee of \$1.00 per Non-Professional User.<sup>6</sup> One User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.<sup>7</sup> The Exchange proposes to reduce the User fees for BZX Options Top. Particularly, the Exchange proposes to reduce the monthly (i) Professional User fee from \$30 per user to \$5 per user and (ii) Non-Professional User fee from \$1.00 per user to \$0.10 per user. The Exchange also proposes to start charging separate User fees for BZX Options Top and BZX Options Depth Feed. The Exchange therefore proposes to eliminate the language under the BZX Options Top table and BZX Options Depth Feed table that states one User fee allows access to the BZX Options Top Feed and the BZX Options Depth Feed.<sup>8</sup>

The Exchange next proposes to increase the current monthly Enterprise Fee. The Enterprise Fee permits a recipient firm who receives BZX Options Top from a Distributor to receive the data for an unlimited number of Professional and Non-Professional Users. Currently, the Exchange assesses an Enterprise Fee of \$3,500 per month. The Exchange proposes to increase the Enterprise Fee to \$20,000 per month. For example, if a recipient firm had 15,000 Professional Users who each receive BZX Options Top at \$5.00 per month (as proposed), then that recipient firm will pay \$75,000 per month in Professional Users fees. Under the proposed Enterprise Fee, the recipient firm will pay a flat fee of \$20,000 for an unlimited number of Professional and Non-Professional Users. A recipient firm must pay a separate Enterprise Fee for

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<sup>6</sup> Distributors that receive BZX Options Data Feeds are required to count every Professional User and Non-Professional User to which they provide the market data product(s)

<sup>7</sup> BZX Options Depth is an uncompressed data feed that offers depth of book quotations and execution information based on options orders entered into the System.

<sup>8</sup> The Exchange is not proposing any changes to the current User Fee rates for BZX Options Depth Feed at this time.

each Distributor that controls the display of BZX Options Top if it wishes such User to be covered by an Enterprise Fee rather than by per User fees. A recipient firm that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. However, every six months, a recipient firm must provide the Exchange with a count of the total number of authorized users of BZX Options Top, including both Professional and Non-Professional Users.

The Exchange lastly proposes to add references to “Depth Feed” in the description of the Enterprise Fee under the BZX Options Depth Feed table to clarify which data feed such Enterprise fee currently applies to, thereby alleviating potential confusion.

## 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>9</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>10</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to 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 Section 6(b)(4) of the Act,<sup>11</sup> which requires that Exchange rules provide for the

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

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>12</sup> The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.<sup>13</sup> Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top Feed. Further, the quote and last sale data contained in the BZX Options Top Feed is identical to the data sent to OPRA for redistribution to the public.<sup>14</sup> Accordingly, market participants can substitute BZX Options Top with feeds from other exchanges and/or through OPRA. Exchange top-of-book data is therefore widely available today from a number of different sources.

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<sup>12</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (December 27, 2022), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>13</sup> See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

<sup>14</sup> The Exchange notes that it makes available to "Customers" the BBO data and last sale data that is included in the BZX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

Moreover, the BZX Options Top 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. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, 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.”<sup>15</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of BZX Options Top Data.

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<sup>15</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

The Exchange believes the proposed changes to reduce the current Professional and Non-Professional User fees are reasonable as recipient firms will be subject to lower User fees. Additionally, the User fees continue to be lower than User fees assessed by other exchanges for similar data.<sup>16</sup> The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to recipient firms and Users. The Exchange also believes continuing to offer BZX Options Top Data to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

The Exchange believes the proposed change to start charging separate User fees for BZX Options Top and BZX Options Depth Feed is equitable and reasonable because the Exchange has not charged for separate User Fees for both feeds since BZX Options Top was adopted in March 2018 and the Exchange no longer wishes to continue to have a single fee.<sup>17</sup> Moreover, the Book Depth Data Feed is purely optional. Only those Customers that deem the product to be of sufficient overall value and usefulness would purchase it. Additionally, the Exchange is not

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<sup>16</sup> See e.g., Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users of Top of PHLX Options (TOPO) Data. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data.

<sup>17</sup> See Securities Exchange Act Release No. 82874 (March 14, 2018), 83 FR 12210 (March 20, 2018) (SR-CboeBZX-2018-017).

required to provide any such waiver to any Distributors of BZX Options Top. The Exchange believes the proposed change is equitable and not unfairly discriminatory as it will apply uniformly to recipient firms.

The proposed increased Enterprise Fee for BZX Options Top Feed is equitable and reasonable as the proposed fee could still result in a fee reduction for recipient firms with a large number of Professional and Non-Professional Users. If a recipient firm has a smaller number of Professional Users of BZX Options Top, then it may continue using the per User structure and benefit from the proposed per User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute BZX Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the Enterprise Fee, even as amended, is reasonable because it simplifies reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee do have to report the number of Users on a monthly basis as they currently do, but rather only have to count authorized users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of subscribers to benefit from purchase of the license need not do so.

**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 top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and

through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges. 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 market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed fees would apply to all similarly situated recipient firms of BZX Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of BZX Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to BZX Options Top, or any of the Exchange's data feeds, as described above. Also as described above, there are numerous substitute products offered by other national securities exchanges, as well as OPRA. Because

market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

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>18</sup> and paragraph (f) of Rule 19b-4<sup>19</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 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

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<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f).

- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2023-001 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-CboeBZX-2023-001. 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 (<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-2023-001 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.<sup>20</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>20</sup> 17 CFR 200.30-3(a)(12).