

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-99307; File No. SR-CboeBZX-2024-003)

January 10, 2024

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend its Fee Schedule to Adopt Fees for the Short Interest Report

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 2, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“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”) proposes to amend its Fee Schedule. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

\* \* \* \* \*

**Cboe U.S. Equities Fee Schedules**

**BZX Equities**

**Effective [December 12, 2023]January 2, 2024**

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**Market Data Fees:**

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

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

## Cboe Premium Exchange Tools

DESCRIPTION	FEE
Monthly Fee per User Login	\$65

### Short Interest Report\*

<u>DELIVERY</u>	<u>FEE</u>
<u>Monthly Fee - Access</u>	<u>\$250</u>
<u>Monthly Fee - Access (Historical Data)</u>	<u>\$250</u>
<u>Monthly Fee per Internal Distributor</u>	<u>\$500</u>
<u>Monthly Fee Internal Distributor (Historical Data)</u>	<u>\$500</u>
<u>Monthly Fee per External Distributor**</u>	<u>\$750</u>
<u>Monthly Fee External Distributor (Historical Data)**</u>	<u>\$750</u>

\*The Short Interest Report is available for purchase on a monthly basis or on an annual basis.

\*\*The Short Interest Report provided for External Distribution is only for display use redistribution.

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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 its Fee Schedule to adopt fees to be assessed to individuals that elect to subscribe to the Short Interest Reports, effective January 2, 2024.

On December 11, 2023 the Exchange proposed to adopt a new data product known as the Short Interest Report.<sup>3</sup> The Short Interest Report contains a summary of consolidated market short interest positions in all BZX-listed securities<sup>4</sup> only as reported by the Financial Industry Regulatory Authority, Inc. (“FINRA”); it is designed to facilitate the distribution of short sale data to, among other things, provide analytical and investment data that the brokerage industry, academic institutions, and investors may use in developing risk-assessment tool and trading models for BZX-listed issues. The report data fields include Cycle Settlement Date,<sup>5</sup> BATS-Symbol,<sup>6</sup> Security Name, Number of Shares Net Short Current Cycle,<sup>7</sup> Number of Shares Net Short Previous Cycle,<sup>8</sup> Cycle Average Daily Trade Volume,<sup>9</sup> Minimum Number of Trade Days

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<sup>3</sup> See SR-CboeBZX-2023-102.

<sup>4</sup> A BZX-listed security is a security listed on the Exchange pursuant to Chapter 14 of the Exchange’s Rules and includes both corporate listed securities and Exchange Traded Products (“ETPs”).

<sup>5</sup> “Cycle Settlement Date” is the reporting period date.

<sup>6</sup> “BATS-Symbol” is the Exchange-assigned symbol for the given security.

<sup>7</sup> “Number Shares Net Short Current Cycle” is the total of uncovered open short interest positions in a particular security in shares, for the current reporting period.

<sup>8</sup> “Number of Shares Net Short Previous Cycle” is the total number of uncovered open short interest positions in a particular security in shares, for the previous reporting period.

<sup>9</sup> “Cycle Average Daily Trade Volume” is the number of shares traded on average per day in a particular security in shares.

to Cover Shorts,<sup>10</sup> Split Indicator,<sup>11</sup> Manual Revision Indicator,<sup>12</sup> Percent Change in Short Position,<sup>13</sup> and Change in Short Position from Previous.<sup>14</sup>

The Short Interest Report is available for purchase by both Members<sup>15</sup> and non-Members on a monthly or annual subscription basis, and subscribers will receive a daily end-of-day file (with values updated twice per month). The Short Interest Report is also available for purchase on a historical monthly basis. The historical reports provide the end-of-day report for each day during a given calendar month, are available for purchase dating back to March 31, 2015, and include the same data fields as the daily end-of-day files. Members and non-Members have the ability to re-distribute (internally and/or externally) the Short Interest Report.

The Exchange now proposes to adopt fees applicable to individuals that subscribe to the Short Interest Reports. As proposed, the Exchange would assess a monthly<sup>16</sup> fee of \$250 per month for individuals that subscribe to the report, \$500 per month for an Internal Distributor<sup>17</sup> of

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<sup>10</sup> “Minimum Number of Trade Days to Cover Shorts” is the ratio of the current short interest position over the average daily volume for the current settlement date.

<sup>11</sup> “Split Indicator” indicates whether the security has undergone a stock split during the current reporting period.

<sup>12</sup> “Manual Revision Indicator” indicates whether the security’s short interest for the previous reporting period has been revised.

<sup>13</sup> “Percent Change in Short Position” is the percent change from the current reporting period’s short interest compared to the previous reporting period’s short interest.

<sup>14</sup> “Change in Short Position from Previous” is the difference between the current and previous reporting period of uncovered short interest positions in a particular security in shares.

<sup>15</sup> See Exchange Rule 1.5(n).

<sup>16</sup> The monthly fees for the Short Interest Reports are assessed based on a 30-day period. For example, if an individual subscribes to the Short Interest Report on December 15, 2023, the monthly fee will cover the period of December 15, 2023 through January 15, 2023. If the individual cancels his/her subscription prior to January 15, 2023, the individual will not be charged for (or have access to) Short Interest Reports for the remainder of January.

<sup>17</sup> An “Internal Distributor” of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more users within the Distributor’s own entity.

the report, and a fee of \$750 per month to an External Distributor<sup>18</sup> of the report. These fees may be paid on a monthly basis or on an annual basis.<sup>19</sup> Data provided to an External Distributor via the Short Interest Report is only for display use redistribution (e.g., the data may be provided on the distributor's platform). Therefore, distributors of the data may not charge separately for data included in the Report or incorporate such data into their product. External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. The higher price for External Distributors reflects the additional value these distributors may gain from the product.

Additionally, the Exchange proposes to adopt fees for the Short Interest Report provided on a historical basis. As noted above, the Short Interest Report will be available for each calendar month dating back to March 31, 2015. As proposed, the fees for Short Interest Reports provided on a historical basis are the same as the fees proposed for the standard Short Interest Report: the Exchange would assess a fee of \$250 per historical month for individuals that subscribe, \$500 per historical month assessed to Internal Distributors of the report, and a fee of \$750 per historical month assessed to External Distributors of the report. Data provided via the historical Short Volume Report is also for display use redistribution only (e.g., the data may be provided on the distributor's platform). Therefore, distributors of the historical data may not charge separately for data included in the Short Interest Report or incorporate such data into their product. Nonetheless, the Exchange believes it is reasonable, equitable and not unfairly

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<sup>18</sup> An "External Distributor" of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more users outside the Distributor's own entity.

<sup>19</sup> Those who subscribe to the Short Interest Report during the middle of a month will receive the end-of-day report for each day beginning on the date of subscription.

discriminatory to charge a fee for display use redistribution that reflects the value these distributors may gain from the historical product.

The Exchange anticipates that a wide variety of market participants will purchase the Short Interest Report, including, but not limited to, active equity trading firms and academic institutions. For example, the Exchange notes that academic institutions may utilize the Short Interest Report data and as a result promote research and studies of the equities industry to the benefit of all market participants. The Exchange further believes the Short Interest Report may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange.

The Exchange notes that the Short Interest Report 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 for a fee.<sup>20</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>21</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>22</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and

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<sup>20</sup> See, e.g., Specifications for Short Interest file, available at: <https://www.nasdaq.com/solutions/short-interest-report>; and NYSE Group Short Interest Client Specification, available at: [NYSE\\_Group\\_Short\\_Interest\\_Client\\_Specification\\_v1.5.pdf](#).

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

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 the Section 6(b)(5)<sup>23</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>24</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“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 Short Interest Report further broadens the availability of U.S. equity market data to investors consistent with the principles of Regulation NMS. The Short Interest Report also promotes increased transparency through the dissemination of short interest data. The Short Interest Report benefits investors by providing access to the Short Interest Report data, which may promote better informed trading, as well as research and studies of the equities industry.

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<sup>23</sup> Id.

<sup>24</sup> 15 U.S.C. 78f(b)(4).

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered equities exchanges that trade equities. Based on publicly available information, no single equities exchange has more than 13% of the equity market share.<sup>25</sup> 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>26</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 attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Short Interest Report.

The Exchange believes that the proposed fees for the Short Interest Report are consistent with the Act in that they are reasonable, equitable, and not unfairly discriminatory. In particular, the Exchange believes that the proposed fees are reasonable because they are reasonably aligned with the value and benefits provided to users that choose to subscribe to the Short Interest Report on the Exchange. As discussed above, the Short Interest Report may be beneficial to Members

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<sup>25</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (December 18, 2023), available at [https://www.cboe.com/us/equities/market\\_statistics/](https://www.cboe.com/us/equities/market_statistics/).

<sup>26</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).



and non-Members as it may provide helpful trading information regarding investor sentiment that may allow market participants to make more informed trading decisions and may be used to create and test trading models and analytical strategies and provide comprehensive insight into trading on the Exchange. Therefore, the Exchange believes that it is reasonable to assess a modest fee to users that subscribe to the Short Interest Report.

The Exchange further believes the proposed fee is reasonable because the amount assessed is less than the analogous fees charged by competitor exchanges. For example, for its Short Interest Reports, Nasdaq charges \$500 for access, \$1,000 for Internal Distributors and from \$2,500 to \$7,500 for External Distributors (depending on the number of subscribers).<sup>27</sup> Additionally, NYSE and its affiliated equity markets (the “NYSE Group”) have a similar Short Interest Report offering, seemingly for a charge.<sup>28</sup> The Exchange therefore believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Indeed, proposing fees that are excessively higher than established fees for similar data products would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Although each of these similar data products provide only proprietary trade data and not trade data from other exchanges, it is possible investors are still able to gauge overall investor sentiment across different equities based on the included data points on any one exchange. As such, if a market participant views another exchange’s potential report as more attractive, then such market participant can merely choose not to purchase the

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<sup>27</sup> See Nasdaq Rule 7, Section 122.

<sup>28</sup> See <https://www.nyse.com/market-data/reference/nyse-group-short-interest>, which includes a “Purchase Now” option. The Exchange is unaware of a related filing for the offering.

Exchange's Short Interest Report and instead purchase another exchange's similar data product, which offers similar data points, albeit based on that other market's trading activity.

In addition, the Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will apply to all similarly situated Members and non-Members that choose to subscribe to the Short Interest Report equally. As stated, the Short Interest Report is completely optional and not necessary for trading. Rather, the Exchange voluntarily makes the Short Interest Report available, and users may choose to subscribe (and pay for) the report based on their own individual business needs. Potential subscribers may subscribe to the Short Interest Report at any time if they believe it to be valuable or may decline to purchase it.

The Exchange also believes it is reasonable, equitable and not unfairly discriminatory to charge an External Distributor of the Short Interest Report a higher fee than an Internal Distributor as an External Distributor may provide the data on their platform. External Distributors, unlike Internal Distributors, are typically compensated for the distribution of short sale data through subscription fees or other mechanisms. Therefore, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge a higher fee for display use redistribution, as it reflects the additional value these distributors may gain from the Short Interest product. Additionally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to charge an Internal Distributor of the Short Interest Report a higher fee than an individual, as an Internal Distributor may distribute the data to one or more users within the Distributor's own entity; thus, the higher fee reflects the additional value such Internal Distributors may gain from the Short Interest product. Further, the proposed fee will apply equally to similarly situated individuals, Internal Distributors and External Distributors,

respectively. Moreover, as described above, another Exchange similarly charges Internal and External Distributors higher fees as compared to individuals for a similar data product.

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 Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the Short Interest Report will be available equally to all Members and non-Members that choose to subscribe to the report. Market participants are not required to purchase the Short Interest Report, and the Exchange is not required to make the Short Interest Report available to investors. Rather, the Exchange is voluntarily making the Short Interest Report available, and market participants may choose to receive (and pay for) this data based on their own business needs. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. Given the above, the Exchange does not believe the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Additionally, as discussed above, the Exchange believes it is appropriate to charge Internal and External Distributors higher fees as compared to individuals, as the higher fees reflect the additional value such Internal Distributors and External Distributors may gain from the Short Interest product.

Next, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, similar products offered by Nasdaq are priced higher than the Short Volume Report. Moreover, 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.” The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ ... As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ ....”. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Further, 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 attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. equities industry as the Exchange seeks to adopt fees to attract purchasers of the Short Interest Report. As noted above, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other equity exchanges that offer similar reports. Accordingly, the Exchange does not believe its proposal imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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>29</sup> and paragraph (f) of Rule 19b-4<sup>30</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 (<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-CboeBZX-2024-003 on the subject line.

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 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-2024-003. 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 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 a.m. and 3 p.m. Copies of the filing also 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-CboeBZX-2024-003 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>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>31</sup> 17 CFR 200.30-3(a)(12).