

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87461; File No. SR-CboeBZX-2019-093)

November 5, 2019

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Adopt Fees for a New Data Product on its Equity Options Platform (“BZX Options”) to be Known as Open-Close Data

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 October 29, 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. (the “Exchange” or “BZX Options”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt fees for a new data product on its equity options platform (“BZX Options”) to be known as Open-Close Data. 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 adopt fees for a new data product on BZX Options known as Open-Close Data, which is available for purchase to BZX Options Members and Non-Members.³ Cboe LiveVol, LLC ("LiveVol"), a wholly owned subsidiary of the Exchange's parent company, Cboe Global Markets, Inc., will make the Open-Close Data available for purchase to Members and Non-Members on the LiveVol DataShop website (datashop.cboe.com). The Exchange proposes to amend its Fee Schedule to adopt fees for the product.⁴

The Exchange recently introduced the Open-Close Data product. Open-Close Data is a volume summary file for trading activity on BZX Options. The Exchange notes it is proprietary BZX Options trade data and does not include trade data from any other exchanges. It is also a historical data product and not a real time data feed. The Open-Close Data summarizes and buckets the volume by origin (customer, professional customer, broker-dealer, and market

³ See Securities Exchange Act Release No. 86811 (August 29, 2019), 84 FR 46765 (September 5, 2019) (SR-CboeBZX-2019-079).

⁴ The Exchange initially filed the proposed fees on business date August 30, 2019 (SR-CboeBZX-2019-080). On business date October 29, 2019, the Exchange withdrew that filing and submitted this filing.

maker), buying/selling, and opening/closing criteria. The customer and professional customer volume is further broken down into trade size buckets (less than 100 contracts, 100-199 contracts, greater than 199 contracts). The data currently goes back to January 2018 and contains all series in an underlying security if it has volume.⁵ The Exchange anticipates a wide variety of market participants to purchase Open-Close Data, including, but not limited to, individual customers, buy-side investors, investment banks and academic institutions. For example, the Exchange notes that academic institutions may utilize Open-Close Data and as a result promote research and studies of the options industry to the benefit of all market participants. The Exchange believes the Open-Close Data product may also provide helpful trading information regarding investor sentiment and may be used to create and test trading models and analytical strategies and provides comprehensive insight into trading on BZX Options. It is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential subscribers may purchase it only if they voluntarily choose to do so. The Exchange notes that its affiliate, Cboe Exchange, Inc. (“Cboe Options”), as well as other exchanges, offer a similar data product.⁶

The Exchange proposes to provide in its Fee Schedule that Members and non-Members may purchase Open-Close Data on a subscription basis (end of day file) or by ad hoc request for a specified month (historical file). The Exchange proposes to assess a monthly fee of \$500 for subscribing to a daily update which will consist of Open/Close data covering all Exchange-listed securities. Members and non-Members purchasing Open/Close data on a subscription basis will

⁵ The Open-Close data file format specifications can be found at <https://datashop.cboe.com/Themes/Livevol/Content/static/OpenCloseSpecification.pdf>

⁶ See Securities Exchange Act Release No. 55062 (January 8, 2007), 72 FR 2048 (January 17, 2007) (approving SR-CBOE-2006-88); See also Securities Exchange Act Release No. 56254 (August 15, 2007), 72 FR 47104 (August 22, 2007) (SR-ISE-2007-70).

receive access to a daily data file. The Exchange proposes to assess a fee of \$400 per request per month for an ad-hoc request of historical Open/Close data covering all Exchange-listed securities. An ad-hoc request can be for any number of months beginning with January 2018 for which the data is available.⁷ The proposed subscription and ad-hoc fees will apply both to Members or non-Members. The Exchange notes that other exchanges, including its affiliate Exchange Cboe Exchange, Inc. (“Cboe Options”) provide similar data products that may be purchased on both a subscription and ad-hoc basis and are similarly priced.⁸

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for Open-Close Data is consistent with Section 6(b) of the Act in general, and furthers the objectives of Section 6(b)(4) of the Act¹¹ in

⁷ For example, a Member or non-Member that requests historical Open/Close Data for the months of October 2018 and November 2018, would be assessed a total of \$800. The Exchange notes that it may make historical data prior to January 2018 available in the future and that such historical data would be available to all Member or non-Member.

⁸ See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

⁹ 15 U.S.C. 78f.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(4).

particular, in that it is an equitable allocation of dues, fees and other charges among its members and other recipients of Exchange data.

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. Particularly, Open-Close Data further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The data product also promotes increased transparency through the dissemination of Open-Close Data and benefits investors by providing access to the Open-Close Data, which may promote better informed trading, as well as research and studies of the options industry. Particularly, information regarding opening and closing activity across different option series may indicate investor sentiment, which can be helpful research and/or trading information. Subscribers to the data may be able to enhance their ability to analyze option trade and volume data, and create and test trading models and analytical strategies. The Exchange believes Open-Close Data provides a valuable tool that subscribers can use to gain comprehensive insight into the trading activity in a particular series, but also emphasizes such data is not necessary for trading. Moreover, the Exchange’s affiliate Cboe Options, along with other exchanges, also offer a similar data product.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. 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.”¹² 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 the recently introduced Open-Close Data product.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to, or even lower than, the fees assessed by other exchanges that provide similar data products.¹³ 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. Like the Exchange’s Open-Close Data product, other exchanges offer similar data products that each provide insight into trading on those markets and may likewise aid in assessing investor sentiment. Although each of these similar open-close data products provide only proprietary trade data and not trade data from other exchanges, it’s possible investors are still able to gauge overall investor sentiment across different option series based on open and closing interest on any one exchange.¹⁴ Similarly, market participants may be able to analyze option trade and volume data, and create and test trading models and analytical

¹² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹³ See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

¹⁴ The exchange notes that its open-close data product does not include data on any exclusive, singly-listed option series.

strategies using only open-close data relating to trading activity on one or more of the other markets that provide similar data products. As such, if a market participant views another exchange's open-close data as more attractive than its Open-Close Data product, then such market participant can merely choose not to purchase the Exchange's Open-Close Data and instead purchase another exchange's open-close data product, which offer similar data points, albeit based on that other market's trading activity.

The Exchange also believes the proposed fees are reasonable as they would support the Open-Close Data product, which is designed to aid investors by providing insight into trading on BZX Options. The Open-Close Data would provide options market participants with valuable information about opening and closing transactions executed on the Exchange, similar to other historical trade data products offered by competing options exchanges. In turn, this data would assist market participants in gauging investor sentiment and trading activity, resulting in potentially better informed trading decisions. As noted above, users may also use such data to create and test trading models and analytical strategies.

Selling historical market data, such as Open-Close Data, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Open-Close Data, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.¹⁵ The Exchange therefore believes that the proposed fees for Open-Close Data reflect the competitive environment and would be properly assessed on Member or non-Member users. The Exchange also believes the proposed fees are equitable and not unfairly

¹⁵ See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A.

discriminatory as the fees would apply equally to all users who choose to purchase such data. The Exchange's proposed fees would not differentiate between subscribers that purchase Open-Close Data, and are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

As noted above, the Exchange anticipates a wide variety of market participants to purchase Open-Close Data, including but not limited to individual customers, buy-side investors, investment banks and academic institutions. For example, on its affiliate exchange Cboe Options, which also offers an Open-Close Data product, approximately 38% of purchases of historical ad hoc Open-Close Data files are individuals, 33% are buy-side investors or investment banks and 25% are academic institutions. Accordingly, the Exchange anticipates that open-close data may be used not just for commercial or monetizing purposes, but also for educational use and research. The Exchange reiterates that the decision as to whether or not to purchase the Open-Close Data is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Open-Close Data, and the Exchange is not required to make the Open-Close Data available to all investors. Rather, the Exchange is voluntarily making historical Open-Close Data available, as requested by customers, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that 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. Rather, the Exchange believes that the proposal will promote competition by permitting the

Exchange to sell a data product similar to those offered by other competitor options exchanges.¹⁶ The Exchange made Open-Close Data available for BZX Options in order to keep pace with changes in the industry and evolving customer needs, and believes the data product will contribute to robust competition among national securities exchanges. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Data. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

Furthermore, the Exchange operates in a highly competitive environment, and its ability to price Open-Close Data is constrained by competition among exchanges that offer similar data products to their customers. As discussed, there are currently a number of similar products available to market participants and investors. At least three other U.S. options exchanges offer a market data product that is substantially similar to the Open-Close Data, which the Exchange must consider in its pricing discipline in order to compete for the market data.¹⁷ For example, 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 discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or in appropriate burden on intermarket competition as other exchanges are free to introduce their own

¹⁶ Id.

¹⁷ See e.g., Cboe Options Fees Schedule, Livevol Fees, Open-Close Data. See also Nasdaq ISE Options 7 Pricing Schedule, Section 10.A and Nasdaq PHLX Options 7 Pricing Schedule, Section 10, PHLX Options Trade Outline (“PHOTO”).

comparable data product and lower their prices to better compete with the Exchange's offering. The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser, in that it does not differentiate between subscribers that purchase Open-Close Data. The proposed fees are set at a modest level that would allow any interested Member or non-Member to purchase such data based on their business needs.

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

The Exchange has neither solicited nor received written 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 Act¹⁸ and paragraph (f) of Rule 19b-4¹⁹ 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:

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f).

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-2019-093 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-2019-093. 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-2019-093 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.²⁰

Jill M. Peterson
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).