

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91340; File No. SR–CboeBZX–2021–021]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule To Expand the Existing Financial Product Distribution Program To Provide for a Derived Data Platform Service

March 17, 2021.

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 March 4, 2021, Cboe BZX Exchange, Inc. (“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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the Fee Schedule to expand the existing Financial Product Distribution Program (the “Program”) to provide for a Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to provide for the distribution of data derived from the Cboe Aggregated Market (“Cboe One”)<sup>3</sup> Summary Feed. 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 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 purpose of the proposed rule change is to implement a pricing structure that would reduce fees charged to Distributors of “Derived Data”, as defined below, through a Derived Data Platform Service. Additionally, the proposal seeks to enhance the Program to permit the distribution of data derived from Cboe One Summary through the existing White Label Service, Application Programming Interface (“API”) Service, and the proposed Platform Service.<sup>4</sup>

###### Background

Under the current Program, a Distributor may subscribe to one of two Derived Data Service options, White Label Service or API Service. As discussed in further detail below, the Exchange proposes to introduce a third Derived Data Service option called the Platform Service. Furthermore, the Exchange seeks to offer Cboe One Summary<sup>5</sup> data under the White Label Service, API Service, and the proposed Platform Service. BZX Top<sup>6</sup> data is currently the only Exchange data offered under the White Label and API Service options. Under the Program, regardless of the Service option selected by a Distributor, the Distributors receive the same real-time Exchange data (e.g., BZX Top) 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 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. Possible uses include the display of information or data, or the creation of derivative instruments, such as swaps,<sup>7</sup> swaptions,<sup>8</sup> or contracts for difference.<sup>9</sup> 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. However, the Distributor must select the appropriate Service option under the Program applicable to its distribution of the Derived Data.

Generally, the recipient of an Exchange data product that distributes that data outside of its own firm is subject to External Distribution<sup>10</sup> fees. Such External Distribution fees vary based on the type of Exchange data product the recipient is subscribed to (e.g., BZX Top, Cboe One Summary, etc.).<sup>11</sup> Specifically, the External Distribution Fees payable by the recipient of BZX Top are as follows: Distribution Fee \$2,500/month; Professional User Fee \$4.00/month; and Non-Professional User Fee \$0.10/month.<sup>12</sup> The External Distribution Fees payable the recipient of Cboe One Summary are as follows: Distribution Fee (\$5,000/month), Professional User Fee (\$10/month), and Non-Professional User Fee (\$0.25/month). Additionally, subscribers of Cboe One Summary are subject to the Data Consolidation Fee.<sup>13</sup>

<sup>7</sup> A swap is a derivative contract in which two parties agree to exchange financial instruments.

<sup>8</sup> A swaption, or swap option, is an option to enter into a swap at a specified time.

<sup>9</sup> A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

<sup>10</sup> External Distribution occurs when a Distributor that receives an Exchange Market Data product distributes that data to a third-party or one or more users outside the Distributor’s own entity.

<sup>11</sup> External Distribution fees are listed in the Exchange’s Fee Schedule by Exchange Market Data product. For example, the External Distribution Fees payable by the recipient of BZX Top are as follows: Distribution Fee \$2,500/month; Professional User Fee \$4.00/month; and Non-Professional User Fee \$0.10/month. As an alternative to User fees, a Distributor may purchase a monthly Enterprise license or Digital Media Enterprise license in addition to the Distribution and User Fees.

<sup>12</sup> As an alternative to User fees, a Distributor may purchase a monthly Enterprise license or Digital Media Enterprise license in addition to the Distribution and User Fees.

<sup>13</sup> The Data Consolidation Fee is generally \$1,000/month. An External Distributor that meets the criteria for the Small Retail Broker Distribution Program is charged a fee of \$350/month instead of the normal \$1,000/month Data Consolidation Fee.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Exchange Rule 11.22(j).

<sup>4</sup> The Exchange initially filed the proposed fee changes January 4, 2021 (SR–CboeBZX–2021–003). On March 4, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> Cboe One Summary 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”).

<sup>6</sup> BZX Top is an uncompressed data feed that offers top of book quotations and execution information based on equity orders entered into the System.

The Exchange currently offers a White Label Service and an API Service that allow Distributors to benefit from certain discounted External Distribution Fees and User Fees for BZX Top data. Instead of the regular fee for External Distribution of Exchange data, Distributors of Derived Data under both the White Label Service and API Service are charged a tiered External Subscriber Fee based on the number of External Subscribers that receive Derived Data from the Distributor.<sup>14</sup> Additionally, Distributors are charged a Professional User<sup>15</sup> Fee based on the number of Professional Users of the Derived Data, which is the same as the Professional User Fee for BZX Top data provided under the External Distribution Fees. Non-Professional Users of Derived Data are not subject to a fee under either the White Label Service or the API Service.

The White Label Service is a type of hosted display solution in which a Distributor hosts, maintains, and controls 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, while the Distributor maintains control of the applications data, entitlements and display. Alternatively, the 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 API 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.

#### Derived Data Platform Service

Now, the Exchange is proposing to implement a third service under the Program, the Platform Service. Under the Platform Service, a Distributor could receive either BZX Top, or as discussed in further detail below, Cboe One Summary data. The Exchange data provided to Distributors under the Platform Service would be identical to Exchange data provided to Distributors under both the White Label and API Services. In contrast to the White Label and API Services, the Platform Service would allow a Distributor to provide derivative products directly to users that are hosted within their infrastructure rather than to third-party entities who in turn provide derivative products to their end users. The Platform Service would be strictly limited to derivative products based in whole or in part on Exchange data where only user remote access is permitted.

As discussed above, distributors of BZX Top may normally be subject to External Distribution and User Fees. Under the proposed Platform Service, Distributors would be liable for the normally applicable External Distribution and User Fees listed above except for the Non-Professional User fee.<sup>16</sup> The Non-Professional User Fee would be eliminated when participating in the Platform Service, thereby reducing costs for Distributors that provide access to such data directly to retail investors. The External Subscriber and User fees associated with the White Label Service and API Service are charged solely to the Distributor. At the Distributor's discretion, it may pass through the External Subscriber and User Fees to External Subscribers who provide Derived Data to their end users. If External Subscriber and User Fees and fee reductions are passed through to an External Subscriber by the Distributor, the External Subscriber can benefit from the External Distribution Fee once a Distributor reaches a higher scale, and also from the waiver of the Non-Professional User Fees. Therefore, the White Label Service and API Service may provide benefits to both External Subscribers as well as Distributors as

Distributors increase their distribution scale. The Platform Service extends the Non-Professional User Fee waiver to Distributors of Derived Data who offer a Platform Service to their own end users, allowing Distributors to benefit consistently across services.

Like the existing White Label Service and API Service, the proposed Platform Service would be entirely optional, in that it would only apply to Distributors that opt to use Derived Data to create a Platform Service, as described herein. It would not impact or raise the cost of any other Exchange product, nor would it affect the cost of Exchange data, except in instances where Derived Data is made available on a Platform Service. A Distributor that provides a Platform Service for Exchange data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service, API Service, or Platform Service would be liable for the fees normally applicable for the distribution of Exchange data.

#### Cboe One Summary

In addition to the above, the Exchange is proposing to adopt fees for the distribution of data derived from Cboe One Summary under the existing White Label Service and API Service, as well as the proposed Platform Service. Specifically, the Exchange is now proposing a fee amendment to allow Distributors that participate in the Program to create Derived Data from Cboe One Summary in addition to BZX Top. Therefore, Distributors of Derived Data created from Cboe One Summary could display information or data or create derivative instruments based on top of book information across the four Cboe equity exchanges rather than just BZX. The Exchange believes that the proposal will enhance the Program as the inclusion of Cboe One Summary will allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market.

As noted above, Distributors of Cboe One Summary data may be subject to the normal External Distribution Fees, User Fees, and the Data Consolidation Fee. As proposed, a Distributor that provides Derived Data from Cboe One Summary externally would be liable for the proposed fees discussed below instead of the fees normally applicable for the External Distribution of Cboe One Summary. Existing fees for BZX Top Derived Data within a White Label Service or API Service are comprised of a tiered fee based on the number of External Subscribers, a monthly fee for each Professional User, and include no fee for Non-Professional Users.

<sup>14</sup> The tiered External Subscriber Fee for BZX Top Derived Data White Label Service ranges from \$200 to \$300 per month and per External Subscriber; thus, the External Subscriber fee is significantly less than the \$2,500/month Distribution. The tiered External Subscriber Fee for BZX Top Derived Data API Service ranges from \$1,500 up to \$2,500 per month and per External Subscriber; thus, the External Subscriber fee may be less than the \$2,500/month Distribution Fee.

<sup>15</sup> A "Professional User" of an Exchange Market Data product is any User other than a Non-Professional User. 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.

<sup>16</sup> The Non-Professional User Fee for external distribution of BZX Top is \$0.10/month.

Alternatively, the proposed fees for the Platform Service are comprised of the normal External Distribution and Professional User Fees applicable for the distribution of BZX Top except that they would not be subject to the Non-Professional Users fees normally applicable. The Exchange proposes to adopt a similar fee structure for Cboe One Summary Derived Data for the White Label Service, the API Service, and the Platform Service discussed above with the addition of the Data Consolidation Fee that would be applicable to each Service option.

As proposed, Distributors would be charged the following fees for a White Label Service for Cboe One Summary Derived Data: (1) \$1,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1–5 External Subscribers; (2) \$750 per month for each External Subscriber if the Distributor makes Derived Data available to 6–10 External Subscribers; and (3) \$500 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing White Label Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$4,500 (*i.e.*, 6 External Subscribers × \$750 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per month for each Professional User, and would charge the Data Consolidation Fee. The Exchange proposes no Non-Professional User fee for the distribution of Cboe One Summary Derived Data under the White Label Service, which is consistent with the fee structure for the distribution of BZX Top Derived Data under the White Label Service.

Alternatively, Distributors would be charged the following fees for an API Service for Cboe One Summary Derived Data: (1) \$5,000 per month for each External Subscriber if the Distributor makes Derived Data available to 1–5 External Subscribers; (2) \$4,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6–20 External Subscribers; and (3) \$3,000 per month for each External Subscriber if the Distributor makes Derived Data available to 11 or more External Subscribers. For example, a Distributor providing API Service Derived Data based on Cboe One Summary to six External Subscribers would be charged a monthly fee of \$24,000 (*i.e.*, 6 External Subscribers × \$4,000 each). Additionally, the Exchange would continue to charge a monthly Professional User fee of \$10 per

month for each Professional User, and would charge the Data Consolidation Fee. The Exchange proposes no Non-Professional User fee for the distribution of Cboe One Summary Derived Data under the API Service, which is consistent with the fee structure for the distribution of BZX Top Derived Data under the API Service.

Lastly, the Exchange proposes to adopt fees for the proposed Platform Service for Cboe One Summary data in addition to the proposed fees for BZX Top discussed above. Like the proposed fee for BZX Top Derived Data, Distributors of Cboe One Summary Derived Data would be liable for the fees normally applicable for the external distribution of Cboe One Summary, except for the Non-Professional User fee, and the Data Consolidation Fee. Therefore, under the Platform Service, Distributors of Cboe One Summary Derived Data would be liable for the External Distribution Fee (\$5,000/month) and Professional User Fee (\$10/month) and the Data Consolidation Fee.

#### Corresponding Amendments to Fee Schedule

Based on the proposed amendments discussed above, the Exchange proposes several clarifying modifications to the Fee Schedule. First, the Exchange proposes to add a definition of “Platform Service” to the Market Data Fees definitions section of the Fee Schedule. The definition would provide that “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.”

The Exchange also proposes to amend explanatory asterisks provided under the Program in the Fee Schedule. Specifically, the Exchange proposes to amend the paragraph following the first asterisk to reference the proposed Platform Service in addition to the existing references to the White Label Service and API Service. Additionally, the Exchange proposes to add references to Cboe One Summary after all references to BZX Top in the paragraph following the first asterisk. The Exchange also proposes to add additional examples to asterisks two and three so as to explain the application of fees for Derived Data from Cboe One Summary. Lastly, the Exchange proposes to add an additional asterisk to state that Cboe One Summary data would be subject to the Data

Consolidation fee set forth in the Fee Schedule. These proposed changes would provide clarity in the Fee Schedule based on the addition of the Platform Service and Cboe One Summary proposed herein.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>17</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>18</sup> in particular, as 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.<sup>19</sup> 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,<sup>20</sup> 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. 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

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

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

<sup>19</sup> 15 U.S.C. 78k–1.

<sup>20</sup> See 17 CFR 242.603.

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>21</sup> The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for its proprietary top of book data offerings through the introduction of a Derived Data Platform Service and the expansion of top of book data offerings to include Cboe One Summary under the Program.

As discussed above, the proposed Platform Service would eliminate the Non-Professional User Fee to Distributors that is normally applied for the External Distribution of Exchange data. The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on Platform Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create and display certain derivative instruments rather than to display the underlying U.S. equity securities. The proposed Platform Service fees are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors.

Similarly, the Exchange believes that it is reasonable to enhance the Program by expanding Exchange data offered under the Program to include Cboe One Summary as doing so will allow 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 primarily purchased for the creation of Derived Data encompassing certain derivative instruments, Distributors do not require a consolidated view of the market across multiple 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 would allow 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 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.<sup>22</sup> Expanding the availability of diverse competitive products actually 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 introduction of pricing programs and the expansion of Exchange data are not only constrained by competition but also ensure 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 proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that 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. The Exchange anticipates up to 10 Distributors to participate in the proposed Platform Service, and up to three Distributors to create Derived Data from Cboe One Summary. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges,<sup>23</sup> 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 would provide an optional fee structure for Distributors to use Exchange data to make Derived Data available to Non-Professional Users via a Platform Service at a reduced fee. As proposed, if a Distributor uses a Platform Service to distribute Derived Data, the Distributor would be charged the normal applicable External Distribution Fees and User Fees excluding the Non-

Professional User Fee. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.<sup>24</sup> Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data through a Platform Service. Exchange market data 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. Distributors of Exchange data are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a White Label Service or an API Service through both a tiered External Distribution Fee and eliminated Non-Professional User Fee. Distributors of Exchange data that do not participate in either the White Label Service or API Service are subject to the normal External Distribution Fees, which include a Distribution Fee, Professional User Fee, and Non-Professional User Fee. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange’s market data products. Although the proposed pricing for the Platform Service differs from the pricing

<sup>24</sup> As discussed previously, the Exchange does not fees to Non-Professional Users pursuant to the White Label Service and API Service. See Securities Exchange Act No. 84002 (August 30, 2018) 83 FR 45149 (September 5, 2018) (SR-CboeBZX-2018-065) (Proposed fee amendment for White Label Service). See also Securities Exchange Act No. 87306 (October 15, 2019) 84 FR 56258 (October 21, 2019) (SR-CboeBZX-2019-087) (Proposed fee amendment for API Service).

<sup>21</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

<sup>22</sup> See generally, the Nasdaq Basic fees at <http://www.nasdaqtrader.com/TraderB.aspx?id=MDDPricingALLN>.

<sup>23</sup> *Id.*

currently in place for the White Label and API Service Programs, it mirrors the normal External Distribution Fee for BZX Top and Cboe One Summary except that there would be no fee for Non-Professional Users. The White Label Service provides a fully controlled solution to display Derived Data as it is ultimately designed and managed by the Distributor, but made available to end users on behalf of an External Subscriber. Alternatively, the API Service offers External Subscribers the use of Derived Data in one or more of their own customized and managed applications which are then made available to their end users as needed. The Exchange believes that the proposed pricing reflects the relative benefits provided to Distributors that offer their own Platform Service that allows Users remote access to derivative products via a hosted display solution directly within the Distributors fully managed infrastructure rather than through an External Subscriber.

The proposed rule change would also provide Distributors the option to create Derived Data from Cboe One Summary, and benefit from reduced fees for that product under the Financial Product Distribution Program, in addition to the currently available BZX Top. The proposed fees would only apply to Distributors that elect to create Derived Data from Cboe One Summary. Similar to the fee structure for BZX Top under the Program, no fee would be assessed for Non-Professional Users of Derived Data from Cboe One Summary. For the same reasons discussed above, the Exchange believes it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Further, the proposed fee would only apply to Distributors that elect to participate in the Program by distributing Derived Data from Cboe One Summary. Exchange market data 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. Although the proposed pricing for Cboe One Summary differs from the pricing currently in place for BZX Top, the Exchange also believes that its pricing reflects the relative benefits provided to Distributors that provide Derived Data based on market information from all four Cboe equities exchanges. For example, the proposed fee for one to five External Subscribers of Derived Data based on Cboe One Summary using the API Service is equal to the aggregate standard External Distribution Fee across the Cboe equities exchange Top

feeds, and is also equal to the standard External Distribution Fee for Cboe One Summary (*i.e.*, \$5,000 per External Subscriber) on the Exchange. The proposed fee under the White Label Service is less than the proposed fee for API Service as the Derived Data is used by External Subscribers on a fully controlled and managed basis, and thus reflects the relative benefits for use of the Derived Data. Further, the proposed fee for Cboe One Summary under the proposed Platform Service is identical to the standard External Distribution fee for Cboe One Summary with the exception that there would be no fee associated with Non-Professional Users.

#### *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 Derived Data through an Exchange approved Platform and enhance the existing program to offer Distributors the option to create Derived Data based on Cboe One Summary. The Exchange believes that this would facilitate greater access to Exchange data, ultimately benefitting 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 BZX Top or Cboe One Summary that make Derived Data available through one of the three Service options offered by the Exchange under the Program. The continued

difference in fees under the Program as compared to the normal External Distribution fees for both BZX Top and Cboe One Summary are appropriate given that External Subscribers and Users receive Derived Data, which by definition cannot be readily reverse-engineered to recreate BZX Top or Cboe One Summary data or used to create other data that is a reasonable facsimile or substitute for BZX Top or 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. The proposed Platform Service fees would apply to data derived from BZX Top and Cboe One Summary, which are subject to competition from exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and the Nasdaq Stock Market, LLC ("Nasdaq") offer pricing discounts for Derived Data today. 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. Specifically, the Nasdaq Derived Data Enterprise license covers the Distributor of the Derived Data to their own users, while the Exchange's current Derived Data programs currently do not cover the Distributor of the Derived Data. In order to better compete for this segment of the market, the Exchange is proposing to expand the Program to include a Derived Data Platform Service, which would allow the Distributors of Derived Data to benefit from discounted pricing when providing the Derived Data to their own end users. Additionally, the Exchange is proposing to enhance the Program by providing a fee structure for Cboe One Summary, which would allow Distributors to create Derived Data that is based on a more comprehensive view of the U.S. equities market. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that 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 Act<sup>25</sup> and paragraph (f) of Rule 19b-4<sup>26</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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-021 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-2021-021. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-021 and should be submitted on or before April 13, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>27</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91339; File No. SR-CboeBZX-2021-020]

**Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to the BZX Top Feed**

March 17, 2021.

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 March 4, 2021, Cboe BZX Exchange, Inc. (the "Exchange" or "BZX") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, 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 amend the fees applicable to the BZX Top Feed. 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 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 purpose of the proposed rule change is to amend the fees applicable to the BZX Top Feed,<sup>3</sup> which is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.<sup>4</sup> Specifically, the Exchange proposes to: (1) Increase the fee for internal distribution of the BZX Top Feed; and (2) introduce Professional User fees for internal Professional Users of the BZX Top Feed.<sup>5</sup> The current fees for external

<sup>3</sup> The Exchange initially filed the proposed fee changes on January 4, 2021. See Securities Exchange Act Release No. 90919 (January 14, 2021), 86 FR 6710 (January 2, 2021) [sic] (SR-CboeBZX-2021-002). On March 4, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See BZX Rule 11.22(d).

<sup>5</sup> A Professional User of an Exchange Market Data product is any User other than a Non-Professional User. See BZX Schedule of Fees, Market Data Fees, Definitions. 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

<sup>25</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>26</sup> 17 CFR 240.19b-4(f).

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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