

post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2021-092, and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93625; File No. SR-CTA/CQ-2021-03]

Consolidated Tape Association; Notice of Filing of the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 thereunder,² notice is hereby given that on November 5, 2021,³ certain participants in the Second Restatement of the Consolidated

Tape Association ("CTA") Plan and Restated Consolidated Quotation ("CQ") Plan (collectively "CTA/CQ Plans" or "Plans") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposal to amend the Plans.⁴ These amendments represent the Twenty-Fifth Charges Amendment to the CTA Plan and Sixteenth Charges Amendment to the CQ Plan ("Amendments"). Under the Amendments, the Participants propose to amend the Plans to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rules ("MDI Rules").⁵ The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rules.

The proposed Amendments have been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.⁶ The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendments, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Schedule of Market Data Charges for the Plans, marked to show the proposed Amendments, is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of these final rules was June 8, 2021. As specified in the MDI Rules Release, the Participants must submit updated fees regarding the receipt and use of the expanded content of consolidated

⁴ The amendments were approved and executed by more than the required two-thirds of the self-regulatory organizations ("SROs") that are participants of the CTA/CQ Plans. The participants that approved and executed the amendments (the "Participants") are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the CTA/CQ Plans are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc. See *infra* Section I. G.

⁵ Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7-03-20) ("MDI Rules Release").

⁶ 17 CFR 242.608(b)(2).

market data by November 5, 2021.⁷ Consistent with that requirement, the Participants are submitting the above-captioned amendments to the Plans to propose such fees.⁸

The Participants are proposing a fee structure for the following three categories of data, which collectively comprise the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:⁹

(1) Level 1 Core Data, which the Participants propose would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Core Data would continue to include all information that subscribers receive for current fees and add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).¹⁰

Professional and Nonprofessional Fees

For each of the three categories of data described above, the Participants are

⁷ MDI Rules Release at 18699.

⁸ As the Commission is aware, some of the SROs (the "Petitioners") have challenged the MDI Rules Release in the D.C. Circuit. The Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia*, the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia*, the right to assert legal challenges regarding the Commission's disposition of this submission.

⁹ 17 CFR 242.600(b)(26) ("Rule 600").

¹⁰ The Participants propose to price subsets of data that comprise core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants understand that certain data subscribers may not wish to add depth of book data or auction information, or may want to add only depth of book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants expect that Competing Consolidators would be purchase all core data.

³⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78k-1.

² 17 CFR 242.608.

³ See Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

proposing a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Core Data, the Participants are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth of book data, Professional Subscribers would pay \$99.00 per device per month for each Network's data. Nonprofessional Subscribers would pay \$4.00 per subscriber per month for each Network's depth of book data. The Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth of book data at this time.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay \$10.00 per device/subscriber per month for each Network's auction information data.

Non-Display Use Fees

The Participants are proposing Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Core Data; (2) depth of book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Non-Display Use fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay Non-Display Use Fees of \$12,477.00 per month for each category of Non-Display Use per Network.

With respect to auction information, Subscribers would pay Non-Display Use fees of \$1,248.00 per month for each category of Non-Display Use per Network. As is the case today, Subscribers would be charged for each category of use of depth of book data and auction information.

Access Fees

Finally, the Participants are proposing Access Fees regarding the use of the three categories of data: (1) Level 1 Core Data; (2) depth of book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Access Fees currently set forth in the Plans. Access to odd-lot information

would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay a monthly Access Fee of \$9,850.00 per Network.

With respect to auction information, Subscribers would pay a monthly Access Fee of \$985.00 per Network.

Clarifications Related to Expanded Content

In addition to the above fees, the Participants propose adding clarifying language regarding the applicability of various fees given the availability of the expanded market data content.

First, the Participants propose to clarify that the Per-Quote-Packet Charges and the Broker-Dealer Enterprise Cap are not applicable to the expanded content, and only apply to the receipt and use of Level 1 Core Data. Under the current Price List, the Per-Quote-Packet Charges and Enterprise Cap serve as alternative fee schedules to the normally applied Professional and Nonprofessional Subscriber Charges. The proposed changes are designed to clarify that these alternative fee schedules are only available with respect to the use of Level 1 Core Data, and the fees for the use of depth of book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. This proposed amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Participants are proposing to clarify that the existing Redistribution Fees would be applicable to all three categories of core data, including any subset thereof. Currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants are not proposing to change the fee level for Redistribution Fees themselves.

Fourth, the Participants are proposing that the existing Redistribution Fees

would be applicable to Competing Consolidators. In the MDI Rules approval order, the SEC stated that "[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model."¹¹ The Commission then compared Competing Consolidators to Self-Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. The Participants also do not believe that the Commission's comparison is consistent with current long-standing practice that redistribution fees are charged to any entity that distributes data externally.¹² By definition, a Self-Aggregator would not be distributing data externally and therefore would not be subject to such fees, which is consistent with current practice that a Subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. Vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers. It would be unreasonably discriminatory for Competing Consolidators, which would be competing with downstream market data vendors for the same data subscriber customers, to not be charged a Redistribution Fee for exactly the

¹¹ MDI Rules Release at 18685.

¹² The current exclusive securities information processor ("SIP") is not charged a Redistribution Fee. However, unlike Competing Consolidators, the processor has been retained by the Plans to serve as an exclusive SIP, is subject to oversight by both the Plans and the Commission, and neither pays for the data nor engages with data subscriber customers. By contrast, under the Competing Consolidator model, the Plans would have no role in either oversight of or determining which entities choose to be a Competing Consolidator, a Competing Consolidator would need to purchase consolidated market data just as any other vendor would, and Competing Consolidators would be responsible for competing for data subscriber clients. Accordingly, Competing Consolidators would be more akin to vendors than the current exclusive SIPs. The Participants note that if any entity that is currently an exclusive SIP chooses to register as a Competing Consolidator, such entity would be subject to the Redistribution Fee.

same activity. Consequently, the Participants believe that it would be unreasonably discriminatory and impose a burden on competition to not charge Competing Consolidators the Redistribution Fee.¹³

Finally, the Participants are proposing to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants are proposing to add headings referencing Level 1 Core Data. Additionally, under Data Access Charges and Multiple Feed Charges, the Participants are proposing to amend “Bid-Ask” to refer to “Top of Book and odd-lot information.”

Administrative Fees

The Participants do not propose any changes to the Multiple Feed Charges, Late/Clearly Erroneous Reporting Charges, and Consolidated Volume Data Non-Compliance Fee. These current fees are administrative fees and would continue to apply to any data usage.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plans

Section XII (b)(iii) of the CTA Plan provides that “[a]ny addition of any charge to . . . the charges set forth in

¹³ The Participants believe it would be more appropriate to compare Competing Consolidators and Self-Aggregators with respect to the fees charged for receipt and use of market data from the Participants and address the fees for the usage of consolidated market data based on their actual usage, which is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. For instance, Participants have proposed to charge a data access fee to Competing Consolidators that would be the same fee to Self-Aggregators.

Exhibit E . . . shall be effected by an amendment to this CTA Plan . . . that is approved by affirmative vote of not less than two-thirds of all of the then voting members of CTA. Any such amendment shall be executed on behalf of each Participant that appointed a voting member of CTA who approves such amendment and shall be filed with the SEC.” Further, Section IX(b)(iii) of the CQ Plan provides that “additions, deletions, or modifications to any charges under this CQ Plan shall be effected by an amendment . . . that is approved by affirmative vote of two-thirds of all the members of the Operating Committee.”

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the Plans. That satisfies the Plans’ Participant-approval requirements.¹⁴

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory.¹⁵ The Commission expressed that the Operating Committee of the Plans “should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.”¹⁶ The Commission further stated that “the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,” and that the “Operating

¹⁴ FINRA, IEX, LTSE, MIAA, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at this time. Additionally, the Advisory Committee requested that the following statement be inserted into the filing: The Advisory Committee has actively participated in the rate setting process with the SROs and has provided the SROs with opinion and guidance on rate setting appropriate to the interests of consumers throughout the process. The Advisors collectively believe that SIP data content fees should be universally lower to align with the un-coupling of SIP data content from the SIP exclusive processor, a function to be performed by Competing Consolidators. The Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.

¹⁵ 15 U.S.C. 78o(c)(1)(C) and (D) and Rule 603(a)(1) and (2).

¹⁶ MDI Rules Release at 18682.

Committee(s) have plenty of experience in developing fees for SIP data.”¹⁷

The Operating Committee is bringing this experience to bear to determine the fees for the new core data elements and is proposing fees that are fair and reasonable and not unreasonably discriminatory. The Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs. However, the Exchange Act does not require a showing of costs, and historically, the Plans have not demonstrated that their fees are fair and reasonable on the basis of cost data.

Moreover, under the decentralized Competing Consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data. Under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and therefore has knowledge of a subset of costs associated with collecting and consolidating market data. By contrast, under the decentralized Competing Consolidator model, the Plans no longer have a role in either specifying the technology associated with exchanges providing data or contracting with a SIP. Rather, as specified in amended Rule 603(b), each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. Moreover, Competing Consolidators will be responsible for connecting to the exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee. Nor does the Operating Committee have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). Accordingly, under the decentralized Competing Consolidator model, the Operating Committee does not have access to any information about the cost of providing consolidated market data.

In the absence of cost information being available to the Operating Committee, the Participants believe instead that fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Participants believe

¹⁷ MDI Rules Release at 18683.

that the value of depth of book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases, decades, at prices constrained by direct and platform competition. Exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

To determine the value of depth of book data, the Participants considered a number of methodologies to determine the appropriate level to set fees for the

expanded data content that are based on the current fees charged for depth of book data by exchanges that have chosen to charge for their data. In particular, the Participants reviewed (1) an ISO Trade-Based Model;¹⁸ a (2) Depth to Top-Of-Book Ratio Model (“Depth-to-TOB Model”); and (3) a Message-Based Model.¹⁹ Ultimately, the Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

In particular, the Participants reviewed the depth to top-of-book ratios

of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth) and NYSE (BQT/ NYSE Integrated). In addition, IEX has recently proposed data access fees for its TOPS and DEEP data feeds, which are not proposed to be charged on a per individual basis. The Participants also reviewed the ratio proposed by IEX between its proposed fees for real-time top of book and depth feeds (TOPS/ DEEP), as set forth below.

Exchange	Product	Prop level 1	Depth	Ratio %
Nasdaq	Nasdaq Basic/Nasdaq Total View	\$26	\$76	292
Cboe	Cboe ONE Summary/Cboe Full Depth	10	100	1000
NYSE	BQT/NYSE Integrated	18	70	89
IEX	TOPS/DEEP	500	2,500	500

The Participants noted that utilizing the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x and resulted in market data fees the Participants believe are fair and reasonable.

The Participants also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Participants. The Participants believe that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b).

Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Participants believe that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth of book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information.

The Participants then applied the 3.94x ratio to the current fees charged for consolidated market data, as follows:

- The Participants applied the 3.94x ratio to the current fees charged to Professional Subscribers taking all three Networks (\$75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling \$296.00 (*i.e.*, \$75.00 × 3.94 = \$295.50, rounded to \$296.00). This fee was then split evenly among the three Networks

(including Network C), resulting in a proposed Professional Subscriber fee of \$99.00 per Network.

- The Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks (\$3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling \$12.00 (*i.e.*, \$3.00 × 3.94 = \$11.82, rounded to \$12.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Nonprofessional Subscriber fee of \$4.00 per Network.

- The Participants applied the 3.94x ratio to the current fees charged for Non-Display Use for all three Networks (\$9,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling \$37,430.00 (*i.e.*, \$9,500.00 × 3.94 = \$37,430.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of \$12,477.00 per Network (including rounding).

- The Participants applied the 3.94x ratio to the current fees charged for direct Data Access for all three Networks (\$7,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling \$29,550.00 (*i.e.*, \$7,500.00 × 3.94 = \$29,550.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of \$9,850.00 per Network.

With respect to the fees for auction information, the Participants looked to the number of trades that occur during

the auction process as compared to the trading day, and determined that roughly 10% of the trading volume is concentrated in auctions. Consequently, the Participants believed that charging a fee that was 10% of the fee charged for depth of book data was an appropriate proxy for determining the value of auction information. As a result, the Participants proposed a \$10.00 fee per Network for auction information, which the Participants believe is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Core Data, the Participants believe that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no additional charge to the current fees, which the Participants are not proposing to change.

Finally, as detailed above, the Participants are proposing to specify that the existing Redistribution Fees would be applicable to the amended core data, and any subset thereof, and that such fees would also be applicable to Competing Consolidators. In the MDI Rules Release, the SEC stated that “[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new

¹⁸ The ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of ISOs executed in

the first five levels of depth as compared to all ISOs executed.

¹⁹ The Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders.

decentralized model.”²⁰ The Commission then compared Competing Consolidators to Self-Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be competing to sell consolidated market data directly to the same market data subscribers.

Vendors are and still will be subject to Redistribution Fees when redistributing data to market data subscribers. It would be incongruent and impose a burden on competition for Competing Consolidators to not be charged a redistribution fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory to not charge Competing Consolidators the redistribution fee. To the contrary, based on the long-standing policy that Redistribution Fees are charged to *any* entity that distributes data externally, the Participants believe it would be a significant departure from established policy, a burden on competition, and unreasonably discriminatory *not* to charge a Redistribution Fee to Competing Consolidators.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely With Respect to Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are consistent with the Act and the rules and regulations thereunder applicable to national market system plans. 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. Please include File Number SR–CTA/CQ–2021–03 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–CTA/CQ–2021–03. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all written statements with respect to the proposed Amendments that are filed with the Commission, and all written communications relating to the proposed Amendments 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 will also be available for website viewing and printing at the principal office of the Plans. 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–CTA/CQ–2021–03 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,
Assistant Secretary.

Attachment A—Proposed Changes to Schedule of Market Data Charges

²⁰ MDI Rules Release at 18685.

²¹ 17 CFR 200.30–3(a)(85).

Attachment A
Proposed Changes to the CTA Plan
(Additions are *italicized*; Deletions are [bracketed])

SCHEDULE OF MARKET DATA CHARGES
[Excluding applicable taxes]

A. Professional Subscriber Charges ^[1,12]		
<i>Level 1 Core Data</i> ¹		
Network A:		
Number of Display Devices		Monthly Rates per Device
1–2	.....	\$45.00
3–999	.....	\$27.00
1000–9,999	.....	\$23.00
10,000 +	.....	\$19.00
Network B:	.....	\$23.00
<i>Depth of Book Data</i>		
Network A:	.....	\$99.00
Network B:	.....	\$99.00
<i>Auction Information</i>		
Network A:	.....	\$10.00
Network B:	.....	\$10.00
B. Nonprofessional Subscriber Charges (per month per subscriber) ^[1,13]		
<i>Level 1 Core Data</i>		
Network A:	.....	\$1.00
Network B:	.....	\$1.00
<i>Depth of Book Data</i>		
Network A:	.....	\$4.00
Network B:	.....	\$4.00
<i>Auction Information</i>		
Network A:	.....	\$10.00
Network B:	.....	\$10.00
C. Per-Quote-Packet Charges ^[1,14]		
<i>Level 1 Core Data</i>		
Network A:	.....	\$0.0075
Network B:	.....	\$0.0075
<i>Depth of Book Data and Auction Information</i>		
Not Available		
D. Broker-Dealer Enterprise—Maximum Monthly Charges ^{5,6}		
<i>Level 1 Core Data</i>		
Network A:	.....	\$660,000
Network B:	.....	\$500,000
<i>Depth of Book Data and Auction Information</i>		
Not Available		
E. Redistribution Charges (per month) ^[1,17]		
Network A:	.....	\$1,000
Network B:	.....	\$1,000
F. Non-Display Use Fees ⁸		
<i>Level 1 Core Data</i>		
Network A		
Last Sale Price Information	.....	\$2,000
Quotation Information	.....	\$2,000
Network B		
Last Sale Price Information	.....	\$1,000
Quotation Information	.....	\$1,000
<i>Depth of Book Data</i>		
Network A:	.....	\$12,477
Network B:	.....	\$12,477
<i>Auction Information</i>		
Network A:	.....	\$1,248
Network B:	.....	\$1,248
G. Television Broadcast Charges (per month per 1,000 households reached) ^{6,9}		
Network A:	.....	\$2.00
Network B:	.....
Number of Customer Households Reached		Monthly Price per 1,000 Customer Households Reached
1 through 5,000,000:	.....	\$1.50
5,000,001 through 10,000,000:	.....	\$1.25
10,000,001 through 20,000,000:	.....	\$1.00
20,000,001 through 40,000,000:	.....	\$0.80
40,000,001 through 60,000,000:	.....	\$0.60
More than 60,000,001:	.....	\$0.50
H. Data Access Charges ¹⁰ (per month)		
1. Direct— <i>Level 1 Core Data</i>		
a. Network A Output Feed		
i. Last Sale	.....	\$1,250.00
ii. [Bid-Ask] <i>Top of Book and Odd-Lot Quotations</i>	.....	\$1,750.00

SCHEDULE OF MARKET DATA CHARGES—Continued
[Excluding applicable taxes]

b. Network B Output Feed	
i. Last Sale	\$750.00
ii. [Bid-Ask] <i>Top of Book and Odd-Lot Quotations</i>	\$1,250.00
2. Indirect—Level 1 Core Data	
a. Network A Output Feed	
i. Last Sale	\$750.00
ii. <i>Top of Book and Odd-Lot Quotations</i> [Bid-Ask]	\$1,250.00
b. Network B Output Feed	
i. Last Sale	\$400.00
ii. <i>Top of Book and Odd-Lot Quotations</i> [Bid-Ask]	\$600.00
3. Direct—Depth of Book Data and Auction Information	
a. Network A Output Feed	
i. Depth of Book Data	\$9,850.00
ii. Auction Information	\$985.00
b. Network B Output Feed	
i. Depth of Book Data	\$9,850.00
ii. Auction Information	\$985.00
I. Multiple Feed Charges ¹¹ (per month)	
Network A:	
i. Last Sale	\$200.00
ii. <i>Top of Book and Odd-Lot Quotations</i> [Bid-Ask]	\$200.00
Network B:	
i. Last Sale	\$200.00
ii. <i>Top of Book and Odd-Lot Quotations</i> [Bid-Ask]	\$200.00
J. Late/Clearly Erroneous Reporting Charges ¹² (per month)	
Network A:	\$2,500.00
Network B:	\$2,500.00
K. Consolidated Volume Data Non-Compliance Fee ¹³ (per month)	
Network A:	\$3,000.00
Network B:	\$3,000.00

Notes to Schedule of Market Data Charges:

¹ Level 1 Core Data includes top of book quotation information, last sale price information, odd-lot information, regulatory data, administrative data, and self-regulatory organization-specific program data. [Charges include last sale price information and quotation information.]

² The Network A professional subscriber charge for Level 1 Core Data contains four tiers of display device charges. In determining which of the four tiers applies to a professional subscriber, the professional subscriber may only include within its tier the display devices that its own employees use (“Internal Distribution”). That is, in determining the appropriate tier, a professional subscriber may not include within its tier display devices used by (a) persons to whom it distributes data that are not employees of the professional subscriber (e.g., independent contractors) or (b) employees of firms to which it distributes data (collectively, “External Distribution”). Rather, if the professional subscriber redistributes data to other professional subscriber, each such other professional subscriber shall determine the tier applicable to it.

For example, if Firm ABC provides data to its own employees and also to the employees of three other firms, Firm ABC shall pay according to the pricing tier that reflects the number of display devices that its own employees use. (That is, Firm ABC’s tier is determined solely according to its Internal Distribution.) Regarding Firm ABC’s External Distribution, each of the three firms to which it redistributes data shall pay according to the pricing tier that reflects the number of display devices that its employees use.

Independent contractors associated with a firm are not considered to be employees of that firm. This means that the firm may not include independent contractors in the count of that firm’s display devices for purposes of determining the applicable pricing tier. Rather, each independent contractor must determine the tier applicable to it, a tier that would be separate and apart from the tier applicable to the firm with which it is associated.

³ Charges apply to vendor providing service to nonprofessional subscribers.

⁴ Per-quote-packet charge is an alternative to monthly display charges and applies equally to professional and nonprofessional subscribers. A quote packet includes any data element or all data elements in respect of a single issue. Last, open, high, low, volume, net change, bid, offer, size, and best bid and offer with size are examples of data elements. “IBM” is an example of a single issue. An index value is deemed to be a single-issue data element. For each of Network A and Network B, Vendor may maximize at \$1.00 that network’s per-quote-packet charges payable for any month in respect of any customer that qualifies as a nonprofessional subscriber, regardless of how many quote-packets the customer may receive during that month.

As the Participant’s form of “Agreement for Receipt and Use of Market Data” permits, the Participants require each data redistributor that wishes to redistribute data on a per-quote basis to periodically audit its quote-metering system. If a redistributor fails to provide NYSE with its audit results on or prior to December 31 of a year in which an audit is required, a late fee of \$3,000 applies for each month the audit is past due.

⁵ An entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 is not required to pay more than the enterprise maximum for any month for the aggregate amount of (a) a network’s display device charges for devices used for its Internal Distribution plus (b) that network’s display device and per-quote-packet charges payable in respect of services that it provides to nonprofessional subscribers that are brokerage account customers of the broker/dealer. A broker/dealer may not include in the enterprise maximum charges for (y) devices used through External Distribution and (z) devices used by independent contractors associated with the broker/dealer. Rather, the professional subscriber charges applicable to External Distribution and to independent contractors are payable in addition to the enterprise maximum.

During 2013, the Network A monthly enterprise maximum became \$686,400, and the Network B monthly enterprise maximum became \$520,000. For each subsequent calendar year, a network’s Participants may, by the affirmative vote of not less than two-thirds of all of the then voting members of CTA, determine to increase that network’s monthly enterprise maximum; provided, however, that no such annual increase shall exceed four percent of the then current enterprise maximum for that network.

⁶ The Participants will post the amount of each network’s applicable monthly Broker-Dealer Enterprise Maximum and Television Ticker Maximum on the website that CTA maintains for the CTA Plan and its amendments.

⁷ The Redistribution Charges apply to any entity that makes core data, including any subset thereof, [last sale information or quotation information] available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. *The Redistribution Charges apply to Competing Consolidators.*

⁸ Non-Display Use refers to accessing, processing or consuming data, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of the datafeed recipient’s display or further internal or external redistribution. It does not apply to the creation and use of derived data.

The Participants recognize three categories of Non-Display Use. Category 1 applies when a datafeed recipient's Non-Display Use is on its own behalf. Category 2 applies when a datafeed recipient's Non-Display Use is on behalf of its clients. Category 3 applies when a datafeed recipient's Non-Display Use is for the purpose of internally matching buy and sell orders within an organization. Matching buy and sell orders includes matching customer orders on the data recipient's own behalf and/or on behalf of its clients. Category 3 includes, but is not limited to, use in trading platform(s), such as exchanges, alternative trading systems ("ATS"), broker crossing networks, broker crossing systems not filed as ATS's, dark pools, multilateral trading facilities, and systematic internalization systems.

For both Network A and Network B, the Non-Display Use charges apply separately for each of the three categories of Non-Display Use. One, two or three categories of Non-Display Use may apply to one organization.

An organization that uses data for Category 3 Non-Display Use must count each platform that uses data on a non-display basis. For example, an organization that uses Network A quotation information for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Network A quotation information Non-Display Use fees.

⁹Television broadcast can be through cable, satellite, or traditional means. A \$2,000 monthly minimum fee applies to Network A television broadcasts.

No entity is required to pay more than the "Television Ticker Maximum" for any calendar month. For months falling in calendar year 2012, the monthly Network A Television Ticker Maximum is \$125,000. For months falling in calendar year 2012, the monthly Network B Television Ticker Maximum is \$10,416.67. For each subsequent calendar year, the Network A Participants may increase the monthly Network A Television Ticker Maximum by the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent. However, for any calendar year, the Network A Participants may determine to waive the Network A "Annual Increase" for the Network A Television Ticker Maximum.

Prorating is permitted for those who broadcast the data for less than the entire business day, based upon the number of minutes the real-time ticker is displayed, divided by the number of minutes the primary market is open for trading (currently 390 minutes). A vendor may simulcast over multiple channels and is not charged more than once for recipients that have access to multiple simulcasted channels. Billing amounts are based on the "households-reached" totals that are published periodically in the Nielsen Report. If a Nielsen Report does not provide the requisite information as to a vendor, the vendor must provide households-reached information, subject to audit. Households-reached totals published at the end of September are the basis for billing for the following January through June. Households-reached totals published at the end of March are the basis for billing for the following July through December.

¹⁰Access to data feeds through an extranet service subjects the data feed recipient to direct access charges. Subscriber is responsible for the telecommunications facilities necessary to access data.

¹¹[For both last sale and bid-ask data feeds, t]This charge applies to each data feed that a data recipient receives in excess of the data recipient's receipt of one primary data feed and one backup data feed.

¹²These charges will be assessed for each month in which there is a failure to provide a network's required data-usage report to the network's administrator, commencing with reporting failures lasting more than three months from the date on which the report is first due. By way of example, if a network's data-usage report is due on May 31, the charge would commence to apply as of September 1 and would appear on the market data invoice for September. The network administrator would assess the charge as of September 1, and would continue to assess the charge each month until the network administrator receives the complete and accurate data usage report.

A report is not considered to have been provided to a network's administrator if the report is clearly incomplete or inaccurate. This would include, but is not limited to, a report that fails to report all data products and a report for which the reporting party did not make a good faith effort to assure the accuracy of data usage and entitlements.

¹³The Participants allow data recipients to display real-time trading volume occurring on all Participants ("Consolidated Volume") at no charge. However, if any such display appears on the same screen as [bid-asked] quotes or last-sale prices that are not consolidated quotes or prices under the CTA Plan or CQ Plan, then the screen must conspicuously display a clarifying statement (the "Display Statement") that reads "Real-time quote and/or trade prices are not sourced from all markets." A vendor or other data redistributor (each, a "Customer") must provide the appropriate network administrator(s) with the form of Consolidated Volume screen print that it provides, as well as a copy of each Consolidated Volume screen print that persons included in the redistribution chain that starts with the Customer (each, a "Subscriber") provide. Each Customer must assure that it and its Subscribers also clearly incorporate the Display Statement into any advertisement, sales literature or other material that displays real-time Consolidated Volume alongside [bid-asked] quotes or last-sale prices that are not consolidated prices or quotes under the CTA Plan or the CQ Plan.

A Customer must submit its and its Subscribers' screen prints by July 1, 2015 or within thirty days of the Customer's entry into its market data agreement with the Participants. It must submit its and its Subscribers' screen prints (including previously provided, new, or changed screen prints) annually by the 31st day of each January thereafter.

These charges will be assessed against a Customer for each month in which the Customer or any of its Subscribers fails to provide the Display Statement when required or fails to provide to the appropriate network's administrator a copy of a Consolidated Volume screen print in a timely manner.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93616; File No. SR-CboeBZX-2021-073]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend How the BZX Official Closing Price Is Determined for a BZX-Listed Security That Is Not a Corporate Security, Pursuant to Rule 11.23(c)(2)(B)(ii)(b)

November 19, 2021.

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 November 9, 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 and II below, which Items have been prepared by the self-regulatory organization. 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") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend how the BZX Official Closing

Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b). 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.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.