

Public Service Company of New Mexico (PNM); Southern California Public Power Authority; and Los Angeles Department of Water and Power, hold possession-only rights for the licenses (*i.e.*, they are not licensed to operate the facility).

II

By application dated December 2, 2020 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML20337A344), as supplemented by letters dated February 26, 2021, and May 14, 2021 (ML21061A156 and ML21134A244, respectively), APS, on behalf of PNM, Avangrid, Inc. (Avangrid), and their corporate affiliates (together, the applicants), requested, pursuant to Section 184 of the Atomic Energy Act of 1954, as amended, and Title 10 of the *Code of Federal Regulations* (10 CFR) Sections 50.80, "Transfer of licenses," and 72.50, "Transfer of license," that the U.S. Nuclear Regulatory Commission (NRC, the Commission) consent to the indirect transfer of PNM's 10.2 percent tenant-in-common interest and possession-only rights in the licenses to Avangrid. By indirect transfer order dated May 25, 2021, the Commission consented to this indirect transfer. By its terms, the indirect transfer order becomes null and void if the transfer is not completed within 1 year (*i.e.*, by May 25, 2022), provided, however, that upon written application and for good cause shown, such date may be extended by order. On May 10, 2022, the NRC issued an order extending the effectiveness of the indirect transfer order from May 25, 2022, to May 25, 2023 (ML22101A266) in response to a request dated February 8, 2022 (ML22040A068).

III

By letter dated February 10, 2023 (ADAMS Accession No. ML23041A441), the applicants submitted a written application to further extend the effectiveness of the indirect transfer order by 1 year, until May 25, 2024. As stated in the application, by order dated December 8, 2021, the New Mexico Public Regulation Commission (NMPRC) declined to issue the regulatory approvals necessary for the applicants to consummate the proposed indirect transfer. The applicants have obtained all other required regulatory approvals, but they cannot proceed with the transfer without the approval of the NMPRC. On January 3, 2022, the applicants filed a Notice of Appeal of the NMPRC order to the Supreme Court of New Mexico. It is not expected, however, that these further legal

proceedings will be resolved within the 1-year effectiveness of the extended indirect transfer order (*i.e.*, by May 25, 2023). The extension would allow adequate time for the applicants to obtain the required regulatory approval and consummate the transfer.

Based on the above, the NRC staff has determined that the applicants have shown good cause for extending the effectiveness of the indirect transfer order by 1 year, as requested.

IV

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234; and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the effectiveness of the indirect transfer order dated May 25, 2021, is extended until May 25, 2024. Should the subject indirect license transfer from PNM to Avangrid not be completed by May 25, 2024, the indirect transfer order shall become null and void, provided, however, that upon written application and for good cause shown, such date may be extended by order.

This Order is effective upon issuance.

For further details with respect to this Order, see the written application for extension dated February 10, 2023, which is available electronically through ADAMS in the NRC Library at <https://www.nrc.gov/reading-rm/adams.html> under Accession No. ML23041A441. Persons who encounter problems with ADAMS should contact the NRC's Public Document Room reference staff by telephone at 1-800-397-4209 or 301-415-4737 or by email to PDR.Resource@nrc.gov.

Dated: March 14, 2023.

For the Nuclear Regulatory Commission.

/RA/

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97134; File No. SR-C2-2023-007]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fees Schedule

March 14, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 28, 2023, Cboe C2 Exchange, Inc. ("Exchange" or "C2") 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 C2 Exchange, Inc. (the "Exchange" or "C2") proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/), 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cboe Data Services, LLC (“CDS”) section of its Fees Schedule.³ Particularly, the Exchange proposes to (i) reformat the section of its Fees Schedule pertaining to market data fees, (ii) harmonize various market data related definitions to align with the definitions used by the Exchange’s affiliates and (iii) modify its fees relating to the distribution of the BBO data feed.⁴

Reformatting

The Exchange first proposes to eliminate references to CDS and rename the section “Market Data Fees” to align with the heading of its affiliates, BZX Options and EDGX Options. The

Exchange notes that no substantive changes are being made with the elimination of the references to CDS fees. Rather, the proposed change more accurately reflects the Exchange’s role as it relates to its market data products as CDS is merely an affiliate that is the Cboe contracting entity for all U.S. equities and options market data products, but the data products themselves are made available by the Exchange. The Exchange also proposes to reformat the layout of the fees under the Cboe Data Services, LLC (“CDS”) section of the Fees Schedule to align with formatting of the corresponding section in the fees schedules of the Exchange’s options exchanges, Cboe BZX Exchange, Inc. (“BZX Options”) and Cboe EDGX Exchange, Inc. (“EDGX Options”), including adding a new “Definitions” section under the CDS Fees (or as proposed, the Market Data Fees) section.

Definitions

In order to provide consistent rules and terminology amongst the Exchange and its affiliated options exchanges, Cboe Options Exchange, Inc. (“Cboe Options”), Cboe BZX Exchange, Inc. (“BZX Options”) and Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively, “Affiliates”) the Exchange is proposing to amend various definitions and product names to harmonize with such terms used by its affiliates BZX Options and EDGX Options, specifically.⁵ As such, the proposed rule change deletes a defined term, adds certain defined terms, and makes certain non-substantive changes to existing definitions, as further described in the table below. The proposed rule change makes these changes throughout the market data fee language to conform to the proposed defined terms and the Exchange uses the proposed updated terms herein.

Defined term	Provision	Current location	Description of change
Customer	A “Customer” is any person, company or other entity that, pursuant to a market data agreement with CDS, is entitled to receive data, either directly from CDS or through an authorized redistributor (i.e., a Customer or an extranet service provider), whether that data is distributed externally or used internally. A third-party vendor of an Approved Third-Party Device, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS. A Floor Broker User, as defined in the CDS Fee Schedule, is not a Customer unless it has a market data agreement in place with CDS.	Section I of the Cboe Data Services, LLC (“CDS”) Section of the Fees Schedule.	Deletes defined term to align terms with BZX Options and EDGX Options. The concept of “Customer” is also better captured through the proposed new term “Distributor”.
Distributor	A Distributor of an Exchange Market Data product is any entity that receives the Exchange Market Data product directly from the Exchange or indirectly through another entity and then distributes it internally or externally to a third party.	N/A	Codifies definition of “Distributor” under new “Definitions” section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options and substantially similar to the language in the first sentence of the definition of “Customer” in the Fees Schedule.
Internal Distributor.	An Internal Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to one or more Users within the Distributor’s own entity.	N/A	Codifies definition of “ Internal Distributor” under new “Definitions” section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.
External Distributor.	An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor’s own entity.	N/A	Codifies definition of “External Distributor” under new “Definitions” section of the C2 Options Fees Schedule. Definition is identical to the definition used by BZX Options and EDGX Options.

³ The Exchange initially filed the proposed fee changes on January 3, 2023 (SR-C2-2023-001). On February 28, 2023, the Exchange withdrew that filing and submitted this proposal.

⁴ The BBO Data Feed is a real-time data feed that includes the following information: (i) outstanding quotes and standing orders at the best available price level on each side of the market; (ii) executed trades time, size, and price; (iii) totals of customer

versus non-customer contracts at the best bid and offer (“BBO”); (iv) all-or-none contingency orders priced better than or equal to the BBO; (v) expected opening price and expected opening size; (vi) end-of-day summaries by product, including open, high, low, and closing price during the trading session; (vi) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (vii) COB information; and (viii) product IDs

and codes for all listed options contracts. The quote and last sale data contained in the BBO data feed is identical to the data sent to the Options Price Reporting Authority (“OPRA”) for redistribution to the public.

⁵ Cboe Options will be submitting a similar filing to harmonize its definitions and products names to align with those of BZX Options and EDGX Options as well.

Defined term	Provision	Current location	Description of change
User	A User of an Exchange Market Data product is a natural person, a proprietorship, corporation, partnership, or entity, or device (computer or other automated service), that is entitled to receive Exchange data.	N/A	Codifies definition of “User” under new “Definitions” section of the C2 Options Fees Schedule. Definition is identical to one used by BZX Options and EDGX Options.
Non-Professional User.	A “Non-Professional User” 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 201(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.	Sections I and III	Relocates definition under new “Definitions” section of the C2 Options Fees Schedule and updates the rule reference to “Section 201(11)” of the Investment Advisors Act of 1940 to “Section 202(a)(11)”.
Professional User.	A Professional User of an Exchange Market Data product is any natural person recipient of an Exchange Market Data product who is not a Non-Professional User.	Sections I and III	Relocates definition under new “Definitions” section of the C2 Options Fees Schedule
Display Only Service.	A “Display Only Service” allows a natural person end-user to view and manipulate data using the Distributor’s computerized service, but not to save, copy, export or transfer the data or any results of the manipulation to any other computer hardware, software or media, except for printing it to paper or other non-magnetic media.	Section I	Relocates definition under new “Definitions” section of the C2 Options Fees Schedule
Device	A “Device” means any computer, workstation or other item of equipment, fixed or portable, that receives, accesses and/or displays data in visual, audible or other form.	N/A	Adds new definition under new “Definitions” section of the C2 Options Fees Schedule. Definition is identical to one used by Cboe Options.

The Exchange also proposes to rename the following market data products and fees and use the proposed names herein, in order to align with the naming convention used by the Exchange’s affiliates, BZX Options, EDGX Options and Cboe Options, as applicable for similar data products and fees.⁶

Current name	Proposed name
BBO Data Feed	C2 Options Top.
Book Depth Data Feed.	C2 Options Depth.
Complex Order Book (COB) Data Feed.	C2 Complex Order Book (COB).
Port Fee	Data Access Fee.

The Exchange believes the proposed changes to eliminate, modify and adopt the terms discussed above will add additionally transparency to the Fees Schedule and will protect investors, as the changes provide more clarity within

⁶ See BZX Options Exchange Fees Schedule, Market Data Fees and EDGX Options Exchange Fees Schedule, Market Data Fees. See also Cboe Data Services, LLC Fees Schedule, Section V. System Fees.

the rule and more harmonized rule language across the Fees Schedules of the Cboe affiliated options exchanges. Further, the Exchange notes that the changes are non-substantive changes or provide additional detail in the rule regarding current market participants that purchase or use the Exchange’s market data products. None of these differences impact the manner in which any of the terms and corresponding fees apply, including how the Exchange would have otherwise characterized a Distributor or User (Professional or Non-Professional).

C2 Options Top Fee Changes

The Exchange first proposes to modify its current User Fees. The Exchange currently charges a “User Fee” of \$50 per month per Device or user ID for use of the data in the C2 Options Top Data Feed by “Display Only Service” users. The current User fee is payable only for “external” Display Only Service users who receive C2 Options Top.⁷ Internal

⁷ Pursuant to the Cboe Global Markets North American Data Policies, Distributors must report the number of authorized external devices that

Distributors may currently distribute C2 Options Top Data to an unlimited number of internal users and Devices within the Distributor at no further cost. The Exchange proposes to eliminate the current C2 Options Top User fee and in its place adopt Professional and Non-Professional User fees for C2 Options Top that would apply to both Internal and External Distributors for all Professional and Non-Professional Users. Particularly, the Exchange proposes to charge C2 Options Top Distributors a monthly fee of \$5.00 per Professional Users User and a monthly fee of \$0.10 per Non-Professional User.⁸

The Exchange lastly proposes to establish a \$10,000 per month Enterprise Fee that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the C2 Options Top Data for distribution

receive C2 Options Top data during a calendar month within 15 days after such month in the manner and format specified by the Exchange from time to time to determine applicable fees.

⁸ Distributors that receive C2 Options Top Data will be required to count every Professional User and Non-Professional User to which they provide the data feed.

to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for an unlimited number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 10,000 Professional Users who each receive C2 Options Top at \$5.00 per month (as proposed), then that Distributor will pay \$50,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license, it would alternatively pay a flat fee of \$10,000 for an unlimited number of Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of C2 Options Top if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.⁹ A Distributor that pays the Enterprise Fee will not have to report its number of such Users on a monthly basis. Rather, every six months, the recipient firm must provide the Exchange with a count of the total number of Professional and Non-Professional Users users of C2 Options Top.¹⁰ The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the “Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.¹¹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹² requirements that the rules of an exchange be designed to prevent

fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,¹³ which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹⁴ The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange’s affiliates, and each of the Exchange’s affiliated U.S. options exchanges also offers similar top-of-book data.¹⁵ Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top Feed. Further, the quote and last sale data contained in the C2 Options Data Feed is identical to the data sent to OPRA for redistribution to the public.¹⁶ Accordingly, Exchange top-of-book data is widely available

¹³ 15 U.S.C. 78f(b)(4).

¹⁴ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 24, 2023), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁵ See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

¹⁶ The Exchange notes that it makes available the BBO data and last sale data that is included in the C2 Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

today from a number of different sources.

Moreover, the C2 Options Top Data Feed is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Accordingly, Distributors and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Additionally, only those Distributors that deem a product to be of sufficient overall value and usefulness would purchase them for distribution to Users. Further, Distributors are not required to distribute, and Users are not required to receive, any one particular data product and may choose to receive none, one, or several of the Exchange’s market data products. Indeed less than 25% of the Exchange’s market data subscriptions is for C2 Options Top. As described above, market participants have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other exchanges and consolidated data. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information¹⁷ from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.¹⁸ As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance

¹⁷ “Consolidated Options Information” means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“OPRA Plan”), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange’s Data Order Form (used for requesting the Exchange’s market data products) requires confirmation that the requesting market participant receives data from OPRA.

¹⁸ *Id.*

⁹ For example, if a Distributor that distributes C2 Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

¹⁰ See Cboe Global Markets North American Data Policies.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁹ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of C2 Options Top Data.

The Exchange believes the proposed changes to adopt new Professional and Non-Professional User fees are reasonable as the User fees continue to be in line with User fees assessed by other exchanges for similar data.²⁰ Moreover, External users will now be subject to lower fees as the Exchange proposes to significantly reduce the monthly User fees from \$50 per External User to \$5.00 per Professional User or \$0.10 per Non-Professional User. Although External Distributors are currently only subject to fees for external users, the fee for external users (which are likely to be Non-Professional Users) are significantly lower (*i.e.*, \$0.10 per Non-Professional User) than the current \$50 fee for external users. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both

Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.²¹ The Exchange also believes offering C2 Options Top to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors for their Professional and Non-professional Users.

The proposed Enterprise Fee for C2 Options Top Feed is equitable and reasonable as the proposed fee could result in a fee reduction for Distributors with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of C2 Options Top Data, then it may continue using the per User structure and benefit from the proposed per C2 Options Top User Fee reductions. By reducing prices for recipient firms with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute C2 Options Top Data, thereby expanding the distribution of this market data for the benefit of investors.

The Exchange further believes that the proposed Enterprise Fee is reasonable because it will simplify reporting for certain recipients that have large numbers of Professional and Non-Professional Users. Firms that pay the proposed Enterprise Fee will not have to report the number of Users on a monthly basis as they currently do, but rather will only have to count

Professional and Non-Professional users every six months, which is a significant reduction in administrative burden. Finally, as described above the Enterprise Fee is entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of the license need not do so.

The Exchange lastly believes the proposed changes relating to the defined terms and terminology will provide additional specificity and clarity, while also harmonizing the various definition with that of its affiliates. Doing so would ensure consistent terms amongst the Exchange and its affiliates, thereby reducing the potential for confusion amongst market data subscribers of the Exchange’s and its affiliates’ market data products. Additionally, the proposed new terms are identical to the terms already used by the Exchange’s affiliates BZX Options and EDGX Options. Similarly, the Exchange believes the proposal to reformat the fees will provide for a more streamlined fees schedule, thereby reducing potential confusion. Accordingly, the Exchange believes the proposed changes remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges and through OPRA. There are therefore a number of alternative products available to market participants and investors, including products offered by certain competing exchanges, as well as OPRA. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as market data customers look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants.

¹⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁰ See *e.g.*, Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees), which provides for a fee of \$40 per month to professional users and \$1.00 per month to non-professional users to cover the usage of PHLX Options (TOPO) Data, TOPO Plus Orders, PHLX Orders and PHLX Depth Data feeds. See also NYSE American Options Proprietary Market Data Fees schedule, which provides for a fee of \$50 per month to professional users and \$1.00 per month to non-professional users of American Options Top Data, American Options Deep and American Options Complex products. By comparison, the total Professional User fee for C2 Options Top and C2 Options COB is in line, and in fact lower than the above Professional User fee at \$30 per Professional User (*i.e.*, \$5 per Professional Users of C2 Options Top, as proposed, and \$25 per Professional User of C2 Options COB). The Exchange’s combined Non-Professional User Fee at \$0.10 per Non-Professional User (*i.e.*, \$0.30 per Non-Professional User of C2 Options Top, as proposed, and \$0 per Non-Professional User of C2 Options COB) is lower than PHLX’s and NYSE American’s aforementioned Non-Professional User fees. C2 Options Depth does not charge users based on Professional or Non-Professional classification and market participants have always been subject to separate User fees across C2 Options market data products.

²¹ See, *e.g.*, Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); See, *e.g.*, Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA’s definition of the term “Nonprofessional”); and See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

As discussed, the proposed fees would apply to all similarly situated recipient firms of C2 Options Top on an equal and non-discriminatory basis. The Exchange believes the differentiated fees for Professional and Non-Professional Users of C2 Options Top is appropriate given Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Non-Professional Users too can receive significant financial benefits through their participation in the markets, however the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets. The Exchange therefore believes that the proposed fee neither favors nor penalizes one or more categories of market participants in a manner that would impose an undue burden on competition.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to C2 Options Top Data, or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's C2 Option Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

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

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 Act²² and paragraph (f) of Rule

19b-4²³ 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. Please include File Number SR-C2-2023-007 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-C2-2023-007. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-C2-2023-007 and should be submitted on or before April 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023-05541 Filed 3-17-23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97129; File No. SR-NSCC-2022-009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge

March 13, 2023.

I. Introduction

On July 7, 2022, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2022-009 (the "Proposed Rule Change") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder.² The Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2022,³ and the Commission has received comments on the Proposed Rule Change.⁴

On September 1, 2022, pursuant to Section 19(b)(2) of the Act,⁵ the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.⁶ On October 14,

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 95286 (July 14, 2022), 87 FR 43355 (July 20, 2022) (File No. SR-NSCC-2022-009) ("Notice of Filing").

⁴ Comments are available at <https://www.sec.gov/comments/sr-nsc-2022-009/srnscc2022009.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ Securities Exchange Act Release No. 95650 (Sept. 1, 2022), 87 FR 55054 (Sept. 8, 2022) (File No. SR-NSCC-2022-009).

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f).