

for the reasons discussed above, the Commission finds that the Proposed Rule Change is reasonably designed to better enable FICC to effectively identify, measure, monitor, and manage its credit exposure to members, and those arising from its payment, clearing, and settlement processes, including by maintaining sufficient financial resources to cover its credit exposure to each member fully with a high degree of confidence consistent with Rule 17Ad-22(e)(4)(i).³²

C. Consistency With Rule 17Ad-22(e)(6)(i) Under the Act

Rule 17Ad-22(e)(6)(i) under the Act requires that each covered clearing agency that provides central counterparty services, such as FICC, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.³³ The Commission believes that the proposal is consistent with Rule 17Ad-22(e)(6)(i) under the Act for the reason stated below.

The Commission agrees that FICC's proposal to add the PD Charge to its margin methodology would enable FICC to more effectively address the risks posed to FICC by un-margined period-over-period fluctuations to member portfolios resulting from trades that FICC novates and guarantees during the coverage gap between margin collections. In its filing materials, FICC provided information regarding the impacts of the proposed PD Charge on its margin collection.³⁴ Specifically, the Impact Study shows that if the PD Charge had been in place from April 2022 through March 2023, the number of backtesting deficiencies would have been reduced by 77 (from 498 to 421, or approximately 15 percent) and the backtesting coverage for 44 members (approximately 34 percent of the GSD membership) would have improved, with 14 members who were below 99 percent coverage brought back to above 99 percent.³⁵ The Commission has reviewed and analyzed FICC's analysis and agrees that adding the PD Charge to FICC's margin methodology would enable FICC to more effectively mitigate the risks attributable to intraday margin fluctuations arising out of member

trading activity between margin collections. As a result, implementing the Proposed Rule Change would better enable FICC to collect margin amounts at levels commensurate with FICC's intraday credit exposures to its members.

Accordingly, the Commission finds the Proposed Rule Change is consistent with Rule 17Ad-22(e)(6)(i) under the Act because it is designed to assist FICC in maintaining a risk-based margin system that considers, and produces margin levels commensurate with, the risks of portfolios that experience significant volatility on an intraday basis.³⁶

D. Consistency With Rule 17Ad-22(e)(6)(iii) Under the Act

Rule 17Ad-22(e)(6)(iii) under the Act requires that each covered clearing agency, such as FICC, establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, at a minimum, calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.³⁷ The Commission believes that the proposal is consistent with Rule 17Ad-22(e)(6)(iii) under the Act for the reason stated below.

As stated above in Section II, FICC's proposal to add the PD Charge is designed to address FICC's exposure to its members attributable to trading activity that takes place in the interval between margin collections. Specifically, since FICC generally novates and guarantees trades upon comparison, a member's trading activity may result in coverage gaps due to large un-margined intraday portfolio fluctuations that remain unmitigated between margin collections.³⁸ As discussed above in Section IV.C, based on the Commission's review of the filing materials, the Commission agrees that that FICC's proposal to add the PD Charge to its margin methodology should enable FICC to more effectively address the risks posed to FICC by un-margined period-over-period fluctuations to member portfolios resulting from trades that FICC novates and guarantees during the coverage gap between margin collections.

Accordingly, the Commission finds the Proposed Rule Change is consistent with Rule 17Ad-22(e)(6)(iii) under the

Act because it is designed to better enable FICC to cover its credit exposures to its members by establishing a risk-based margin system that specifically calculates margin sufficient to cover its potential future exposure to members in the interval between the last margin collection and the close out of positions following a member default.³⁹

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change, as modified by Amendment No. 1, is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act⁴⁰ and the rules and regulations promulgated thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁴¹ that proposed rule change SR-FICC-2023-011, be, and hereby is, *approved*.⁴²

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴³

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98497; File No. SR-CboeBZX-2023-062]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Amend the Initial Period After Commencement of Trading of a Series of ETF Shares on the Exchange as It Relates to the Holders of Record and/or Beneficial Holders, as Provided in Exchange Rule 14.11(l)

September 25, 2023.

On August 14, 2023, Cboe BZX Exchange, Inc. ("BZX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule

³⁹ 17 CFR 240.17Ad-22(e)(6)(iii).

⁴⁰ 15 U.S.C. 78q-1.

⁴¹ 15 U.S.C. 78s(b)(2).

⁴² In approving the Proposed Rule Change, the Commission considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁴³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³² 17 CFR 240.17Ad-22(e)(4)(i).

³³ 17 CFR 240.17Ad-22(e)(6)(i).

³⁴ See *supra* note 20.

³⁵ See *id.*

³⁶ 17 CFR 240.17Ad-22(e)(6)(i).

³⁷ 17 CFR 240.17Ad-22(e)(6)(iii).

³⁸ See Notice of Filing, *supra* note 4, at 57486.

change to amend the initial period after commencement of trading of a series of ETF Shares on the Exchange as it specifically relates to holders of record and/or beneficial holders under BZX Rule 14.11(l). The proposed rule change was published for comment in the **Federal Register** on September 1, 2023.³

Section 19(b)(2) of the Act⁴ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is October 16, 2023. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised therein. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,⁵ designates November 30, 2023, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2023-062).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Sherry R. Haywood,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98514; File No. SR-OPRA-2023-01]

Joint Industry Plan; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Amendment To Modify the Options Price Reporting Authority's Fee Schedule Regarding Caps on the Amounts of Certain Port Fees

September 25, 2023.

I. Introduction

On July 14, 2023, the Options Price Reporting Authority ("OPRA"), pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")¹ and Rule 608 of Regulation National Market System ("Regulation NMS") thereunder,² filed with the Securities and Exchange Commission ("Commission") a proposed amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan").³ The proposed OPRA Plan amendment ("Proposed Amendment") would amend the OPRA Fee Schedule to reflect the applicable monthly fee caps on certain connectivity ports that are used to access OPRA data. The Proposed Amendment was published for comment in the **Federal Register** on August 2, 2023.⁴ The Commission has not received any comments on the Proposed Amendment.

This order institutes proceedings, under Rule 608(b)(2)(i) of Regulation NMS,⁵ to determine whether to approve or disapprove the Proposed Amendment or to approve the Proposed Amendment with any changes or subject to any conditions the Commission deems necessary or appropriate after considering public comment.

¹ 15 U.S.C 78k-1.

² 17 CFR 242.608.

³ The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder. See Securities Exchange Act Release No. 17638 (Mar. 18, 1981), 22 SEC. Docket 484 (Mar. 31, 1981). The full text of the OPRA Plan and a list of its participants are available at <https://www.opraplan.com/>. The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges.

⁴ See Securities Exchange Act Release No. 98012 (July 27, 2023), 88 FR 50939 ("Notice").

⁵ 17 CFR 242.608(b)(2)(i).

II. Summary of the Proposed Amendment⁶

OPRA states that the Proposed Amendment is designed to amend the OPRA Fee Schedule to provide public notice that OPRA negotiated terms in the 2021 Processor Services Agreement (the "2021 Processor Agreement") between OPRA and the Securities Industry Automation Corporation ("SIAC") that impose caps on certain port fees that can be charged per month when SIAC, either directly or through a third party, provides direct access to OPRA data to any person authorized by OPRA to receive direct access to OPRA data.⁷ OPRA further states that, under the 2021 Processor Agreement, SIAC is OPRA's "processor," meaning that SIAC gathers the last sale and quote information from each of the OPRA members, consolidates that information, and disseminates the consolidated OPRA data.⁸ According to OPRA, as the processor, SIAC works directly with OPRA members and data vendors to provide connectivity to SIAC, and connectivity to SIAC is currently provided by an affiliate of SIAC, the ICE Global Network ("IGN"), which both sets and charges the port fees associated with that connectivity.⁹

OPRA states that recipients of OPRA data can access that data using a 10 gigabit ("Gb"), 40 Gb, or 100 Gb network connection. OPRA further states that it has contractually capped the connectivity or "port" fees that SIAC, or any third party utilized by SIAC, may charge to provide direct connectivity to OPRA data using a 10 Gb or 40 Gb connection and that it has "the right to approve a cap on port fees that could be charged for . . . higher capacity ports" in the event that such higher capacity ports become available in the future.¹⁰

OPRA states that the negotiated port fee caps of \$16,000 per month per 10 Gb port and \$20,500 per month per 40 Gb port were established as part of the 2015 Processor Agreement between OPRA and SIAC.¹¹ OPRA further states that these caps were retained in the 2021 Processor Agreement,¹² and that OPRA's Management Committee

⁶ The full text of the Proposed Amendment appears as Attachment A to the Notice. See Notice, *supra* note 4, 88 FR at 50941-42.

⁷ See *id.* at 50939.

⁸ See *id.*

⁹ See *id.*

¹⁰ See *id.*

¹¹ See *id.*

¹² See *id.* at 50939-40 (stating OPRA "used the negotiation process as an opportunity to ensure that SIAC's ability to increase the amount of port fees would be capped during the term of the 2015 Processor Agreement for all OPRA data recipients, including OPRA members, who were authorized to receive direct access to OPRA data.").

³ See Securities Exchange Act Release No. 98231 (August 28, 2023), 88 FR 60516. No comments have been received on the proposed rule change.

⁴ 15 U.S.C. 78s(b)(2).

⁵ 15 U.S.C. 78s(b)(2).

⁶ 17 CFR 200.30-3(a)(31).