

they arise. However, these potential reductions in aggregate legal costs and information technology costs may be partially offset by increases in legal costs for disputes that involve individual CAT Reporters and CAT LLC. Legal costs for these bilateral disputes may increase because resolution via arbitration can incur fewer legal costs than resolution via courts.<sup>51</sup>

The Commission believes the Governing Law would not affect efficiency because it does not produce a substantive change in the application of the federal laws of the United States and the laws of the state of New York to legal matters involving CAT LLC and CAT Reporters.

### B. Competition

The Commission believes the Forum Selection Provision will have small positive effects on competition within markets with businesses subject to CAT Reporter Agreements. The Forum Selection Provision, via courts' mechanisms for dispute consolidation, may reduce individual firms' legal expenses during disputes with CAT LLC because dispute related legal costs may then be shared by multiple parties. If these legal expenses are shared approximately equally among involved firms, then small firms may benefit slightly more from courts' mechanisms for dispute consolidation than large firms because legal costs will decrease more as a fraction of revenue for small firms than large firms. But, the benefits of dispute consolidation for small firms may be partially reduced by greater legal costs for bilateral disputes with CAT LLC where legal costs cannot be shared by several CAT Reporters and resolution via arbitration may require lower legal costs.<sup>52</sup> The Forum Selection Provision may also make the outcomes of disputes between CAT Reporters and CAT LLC slightly more predictable because legal precedent and previous court cases may provide information regarding disputes possible outcomes. Less uncertainty about the outcomes of disputes involving CAT LLC and CAT Reporters may slightly reduce financing costs for firms by reducing uncertainty about the effect of dispute resolution outcomes on small firms' profitability. The reduction in financing costs may be greater for smaller firms where the effects of disputes' outcomes may have relatively large effects on these firms' profitability.

The Commission believes the Governing Law Provision will not materially affect competition because

requiring federal law and the laws of the state of New York to govern all matters between the CAT LLC and the CAT Reporters will not have an economically significant effect on the legal costs, or legal outcomes, or other factors that might affect competition among businesses subject to CAT Reporter Agreements.

### C. Capital Formation

The Commission believes the Forum Selection Provision and Governing Law Provision will not materially affect capital formation. The proposed amendment relates to dispute resolution between Industry Members and Participants and is thus unlikely to materially impact capital formation because the proposed amendment does not generally affect publicly traded firms' cost of capital, does not affect factors influencing investors' investments in publicly traded companies, and the previously discussed potential efficiency and competition benefits of the proposed amendment are too small in magnitude to affect the prices at which CAT Reporters offer trading services and products to investors.

### VI. Conclusion

For the reasons set forth above, the Commission finds that the Proposed Amendment is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, and in particular, Section 11A of the Exchange Act,<sup>53</sup> and Rule 608(b)(2)<sup>54</sup> thereunder in that the Proposed Amendment is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of a national market system, or otherwise in furtherance of the purposes of the Exchange Act.

*It is therefore ordered*, pursuant to Section 11A of the Exchange Act,<sup>55</sup> and Rule 608(b)(2) thereunder,<sup>56</sup> that the Proposed Amendment (File No. 4-698) be, and hereby is, approved.

By the Commission.

**Sherry R. Haywood**,  
Assistant Secretary.

[FR Doc. 2023-06487 Filed 3-28-23; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>53</sup> 15 U.S.C. 78k-1.

<sup>54</sup> 17 CFR 242.608(b)(2).

<sup>55</sup> 15 U.S.C. 78k-1.

<sup>56</sup> 17 CFR 242.608.

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97189; File No. SR-CBOE-2023-015]

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

March 23, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 10, 2023, Cboe Exchange, Inc. ("Exchange" or "Cboe Options") 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 Exchange, Inc. (the "Exchange" or "Cboe Options") 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://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), 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.

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

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

<sup>51</sup> See Section IV.A, *supra*.

<sup>52</sup> See *id.*

*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 Market Data section of its Fees Schedule.<sup>3</sup> Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to Cboe Options Top, (ii) adopt a credit towards the monthly Distribution fees for Cboe Options Top, (iii) modify the Cboe Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

Cboe Top Data

By way of background, the Exchange offers the Cboe Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The Cboe Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in Cboe Options Top Data. The Exchange's affiliated options exchanges (*i.e.*, Cboe C2 Exchange, Inc. ("C2 Options"), Cboe BZX Exchange, Inc. ("BZX Options"), and Cboe EDGX Exchange, Inc. ("EDGX Options")) (collectively, "Affiliates") also offer similar top-of-book data feeds.<sup>4</sup> Particularly, each of the Exchange's Affiliates 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 Cboe Options Top. The Exchange proposes to make the following fee changes relating to Cboe Options Top.

New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the Cboe Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive Cboe Options Top feed. The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a three (3) month New External Distributor Credit applicable to

External Distributors of their top-of-book data feeds.<sup>5</sup>

Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe Options Top equal to the amount of its monthly Usage Fees up to a maximum of the Distributor Fee for the Cboe Options Top feed. For example, an External Distributor will be subject to a \$9,000 monthly Distributor Fee where they elect to receive the Cboe Options Top. If that External Distributor reports User quantities totaling \$9,000 or more of monthly usage of the Cboe Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$8,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to Cboe Options Top. In every case the Exchange will receive at least \$9,000 in connection with the distribution of the Cboe Options Top (through a combination of the External Distribution Fee and per User Fees). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>6</sup>

Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the Cboe Options Top Feed for distribution to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses an Enterprise fee of \$300,000 per month. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: \$300,000 for up to 1,500,000 Users (Tier 1), \$450,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$600,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$450,000 for Tier 2). The Enterprise Fee

may provide an opportunity to reduce fees. For example, if a Distributor has 1.4 million Non-Professional Users who each receive Cboe One Options Feed at \$0.30 per month (as proposed), then that Distributor will pay \$420,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of \$300,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>7</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee. 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 a license need not do so.

Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which is launching March 1, 2023.<sup>8</sup> Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer ("BBO") of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed. See

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CBOE-2023-014). On March 10, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See C2 Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

<sup>5</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>6</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Id.

<sup>7</sup> See Cboe Global Markets north American Data Policies.

<sup>8</sup> See SR-CBOE-2023-012.

e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

The Cboe One Options Feed will also consist of Symbol Summary,<sup>9</sup> Market Status,<sup>10</sup> Trading Status,<sup>11</sup> and Trade Break<sup>12</sup> messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors<sup>13</sup>

<sup>9</sup> The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

<sup>10</sup> The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

<sup>11</sup> The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (e.g., Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

<sup>12</sup> The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

<sup>13</sup> For purposes of this filing, a "vendor", which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (e.g., a data provider that resells exchange market data to a retail brokerage firm). The term "distributor" herein, will refer to any entity that receives an exchange market

would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a "Data Consolidation Fee," which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, vendors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External

data product, directly from the exchange or indirectly from another entity (e.g., from a data vendor) and then distributes to individual internal or external end-users (e.g., a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's "third-party customer" or "customer" is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

Distribution Fee equal to the amount of monthly User Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, C2 Options, EDGX Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

#### Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of \$15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (i.e., the monthly Internal Distribution fees are \$3,000 for BZX Options Top, \$500 for EDGX Options Top, \$2,500 for C2 Options Top and \$9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of \$10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (i.e., the monthly External Distribution fees are \$5,000 per month for the Cboe Options Top, \$2,500 per month for C2 Options Top, \$2,000 per month for BZX Options Top, and \$500 for EDGX Options Top). As noted above, the Exchange is proposing to charge External Distributors an External Distribution Fee that equals the combined External Distribution fees of each individual Top feed to ensure that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentive them to enlist new Users to receive the Cboe One Options Feed. The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a three (3) month New External Distributor Credit applicable to Cboe One Summary Feed.<sup>14</sup> To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed

<sup>14</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional<sup>15</sup> User and Non-Professional<sup>16</sup> User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is \$30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$15.50 per Professional User for the Cboe Options Top, \$5 per Professional User for C2 Options Top, \$5 per Professional User for BZX Options Top, and \$5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of \$0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.*, \$0.30 per Non-Professional User for Cboe Options Top, \$0.10 per Non-Professional User for C2 Options Top, \$0.10 per Non-Professional User for BZX Options Top, and \$0.10 per Non-

Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed.

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe One Feed equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the Cboe One Options Feed. For example, an External Distributor will be subject to a \$10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling \$10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$9,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. In every case the Exchange will receive at least \$10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>17</sup>

#### Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified 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 Exchange proposes to adopt the following monthly Enterprise Fees: \$350,000 for up to 1,500,000 Users (Tier 1), \$550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$750,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$550,000 for Tier 2). The Enterprise Fee may provide an

opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at \$0.60 per month (as proposed), then that Distributor will pay \$600,000 per month in Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of \$350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.<sup>18</sup> A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>19</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier. 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 a license need not do so.

#### Data Consolidation Fee

The Exchange also proposes to charge External Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. External Distributors could

<sup>15</sup> 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.

<sup>16</sup> A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

<sup>17</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>18</sup> For example, if a Distributor that distributes Cboe 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.

<sup>19</sup> See Cboe Global Markets north American Data Policies.

similarly create a competing product to the Cboe One Options Feed based on these individual data feeds, or, alternatively, the applicable Top and Last Sale products offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>20</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>21</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.<sup>22</sup> Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,<sup>23</sup> which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

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.<sup>24</sup> 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.<sup>25</sup> 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 Cboe Options Top Data Feed. Further, the quote and last sale data contained in the Cboe Data Feed is identical to the data sent to OPRA for redistribution to the public.<sup>26</sup> Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the Cboe Options Top Data Feed and Cboe One Options Feeds are 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 these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. 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 Information<sup>27</sup> 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.<sup>28</sup> As such, all proprietary data feeds are optional.

<sup>25</sup> 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.

<sup>26</sup> The Exchange makes available the top-of-book data and last sale data that is included in the Cboe Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

<sup>27</sup> "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.

<sup>28</sup> *Id.*

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>29</sup> 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 Cboe Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those

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

<sup>20</sup> 15 U.S.C. 78f.

<sup>21</sup> 15 U.S.C. 78f(b)(4).

<sup>22</sup> 15 U.S.C. 78k-1.

<sup>23</sup> See 17 CFR 242.603.

<sup>24</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (February 23, 2024), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. 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.<sup>30</sup> The Exchange also believes offering Cboe

One Options Feed 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.

*Enterprise Fee.* The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the Cboe Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional Users of the Cboe One Options Feed, then it may continue using the per User structure and benefit from the per User Fee reductions. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options Feed, thereby expanding the distribution of this market data for the benefit of investors. Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

*Distributor Fees.* The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the existing distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise

Fee). Furthermore, the proposal is designed to incentivize External Distributors to subscribe to Cboe One Options Feed.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

In addition, the Exchange believes it is reasonable to not charge External Distributors of C2 Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months and does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

*Data Consolidation Fee.* The Exchange believes that the proposed \$500 per month Data Consolidation Fee charged to Distributors who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributor who obtain the Cboe One Options Feed will be charged the same fee. The increased cost of the Cboe One Options Feed is designed to include the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable would not permit unfair discrimination.

In addition, a vendor could create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with the Cboe One Options Feed pricing. Therefore, the Exchange believes the proposed pricing would enable a vendor to create a competing

<sup>30</sup> 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).

product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

#### *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. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants 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 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 Cboe Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's Cboe Options 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.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of Cboe Options Top on an equal and non-discriminatory basis. 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.

Additionally, the Cboe One Options Feed will enhance competition because

it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The

Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of alternatives to the Cboe One Options Feed, including the existing underlying feeds and data from other sources, such as OPRA, constrains the Exchange from setting unreasonable fees, or fees that are unreasonably discriminatory, when vendors and Distributors can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or Distributor would achieve through the purchase.

#### *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 Act<sup>31</sup> and paragraph (f) of Rule 19b-4<sup>32</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f).

• Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2023-015 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-CBOE-2023-015. 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-CBOE-2023-015 and should be submitted on or before April 19, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

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**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97188; File No. SR-C2-2023-010]

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

March 23, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 16, 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/](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.

#### 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 Market Data section of its Fees Schedule.<sup>3</sup> Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to C2 Options Top, (ii) adopt a credit towards the monthly Distribution fees for C2 Options Top, (iii) modify the C2 Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

##### C2 Top Data

By way of background, the Exchange offers the C2 Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The C2 Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in C2 Options Top Data. The Exchange's affiliated options exchanges (*i.e.*, Cboe Exchange, Inc. ("Cboe Options"), Cboe BZX Exchange, Inc. ("BZX Options"), and Cboe EDGX Exchange, Inc. ("EDGX Options") (collectively, "Affiliates")) also offer similar top-of-book data feeds.<sup>4</sup> Particularly, each of the Exchange's Affiliates 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. The Exchange proposes to make the following fee changes relating to C2 Options Top.

##### New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the C2 Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive C2 Options Top feed. The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-C2-2023-008). On March 3, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-009. On March 16, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

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

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

<sup>33</sup> 17 CFR 200.30-3(a)(12).