

of the Act<sup>29</sup> and paragraph (f) of Rule 19b-4<sup>30</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2023-030 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-CboeBZX-2023-030. 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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-CboeBZX-2023-030 and should be submitted on or before June 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-10465 Filed 5-16-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97486; File No. SR-C2-2023-012]

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

May 11, 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 April 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/](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.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

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

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

#### 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 Cboe Data Services, LLC ("CDS") section of its Fees Schedule.<sup>3</sup> 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.<sup>4</sup>

###### Reformatting

The Exchange first proposes to eliminate references to CDS and instead refer to the "Exchange", as well as rename the section currently titled "Cboe Data Services, LLC Fees" to "Market Data Fees" to align with the terminology and heading of its affiliates, BZX Options and EDGX Options. The Exchange notes that no substantive changes are being made with the

<sup>3</sup> The Exchange initially filed the proposed fee changes on January 3, 2023 (SR-C2-2023-001). On March 1, 2023, the Exchange withdrew that filing and replaced it with SR-C2-2023-007, which was submitted on February 28, 2023. On April 28, 2023 the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> 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; (vii) recap messages any time there is a change in the open, high, low or last sale price of a listed option; (viii) COB information; and (ix) 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.

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>30</sup> 17 CFR 240.19b-4(f).

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 and reorganize 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 fee schedules of the Exchange’s affiliated 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. As part of the reformatting, the Exchange notes that it is moving up the “Trial Usage” description from the end of the Fees Schedule towards the top (no changes are being made to the language under this 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, as well as definitions used in Cboe’s Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies.<sup>5</sup> As such, the proposed rule change deletes a defined term, adds certain defined terms, relocates certain 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. An entity or person that receives BBO data from a Customer through a Display Only Service 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.” Eliminates language that specifies that a person, company, entity that does not have a market data agreement in place with CDS is not considered a “Customer” since the Exchange is not proposing to use that term in the Fees Schedule with respect to market data fees and does not believe it’s necessary to clarify this point in the Fees Schedule. <sup>6</sup> Neither BZX Options nor EDGX Options refer to market data agreements in their respective Fees Schedules.
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. An Exchange Market Data Product refers to any Data Product set forth in the Market Data Fees section of the Exchange’s Fees Schedule. Entities, not individual persons, distribute market data. 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.
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 the one used by BZX Options and EDGX Options.

<sup>5</sup> 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.

<sup>6</sup> All Distributors of C2 Options proprietary market data products are subject to Cboe Global Markets North American Data Policies and must

still sign the Cboe Global Markets Global Data Agreement.

Defined term	Provision	Current location	Description of change
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.	Section 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 User other than a Non-Professional User.	Section III .....	Relocates definition under new "Definitions" section of the C2 Options Fees Schedule and eliminates reference to "natural person" recipient of "Data" to align with the "Professional User" definition used by BZX Options and EDGX Options, as well as Cboe's market data policies and agreements.
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. Replaces reference to "Customer" with "Distributor".
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.	Section I under "User Fees".	Relocates definition under new "Definitions" section of the C2 Options Fees Schedule.

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.<sup>7</sup>

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 .....	Direct Data Access Fee.

The Exchange believes the proposed changes to eliminate, modify and adopt the terms discussed above will add transparency to the Fees Schedule and will protect investors, as the changes provide more clarity within the rule and more harmonized rule language across the Fees Schedules of the Cboe affiliated options exchanges, as well as well as definitions used in Cboe's Cboe Global Markets Global Data Agreement and

<sup>7</sup> 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 IV. System Fees.

Cboe Global Markets North American Data Policies. Further, the Exchange notes that the above-described changes relating to definitions 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) as such definitions are more consistent with the definitions already used in the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, to which all firms receiving C2 Options market data must adhere to.

**C2 Options Top Fee Changes**

The Exchange first proposes to modify its current User Fees. The Exchange currently charges all Distributors a Distribution Fee of \$2,500 per month (which applies for Internal and/or External Distribution). Additionally, the Exchange currently assesses 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 and are not employees or natural person independent contractors of the Distributor, the Distributor's affiliates or an authorized service facilitator.<sup>8</sup> Internal Distributors

<sup>8</sup> Pursuant to the Cboe Global Markets North American Data Policies, Distributors must report the number of authorized external devices that 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. In connection with a Distributor's distribution of the market data product, Distributors are required to report all Professional and Non-Professional Users in accordance with the following: Distributor should count as one User each unique User that the Distributor has entitled to have access to the market data product. However, where a device is dedicated specifically to a single individual, the Distributor should count only the individual and need not count the device. Distributor should identify and report each unique User. If a User uses the same unique method to gain access to the market data product, the Distributor should count that as one User. However, if a unique User uses multiple methods to gain access to the market data product (e.g., a single User has multiple passwords and user identifications), the Distributor should report all of those methods as an individual User. Distributors should report each unique individual person who receives access through multiple devices as one

Continued

may currently distribute C2 Options Top Data to an unlimited number of internal Users and Devices within the Distributor at no further cost (aside from the above-mentioned monthly Distribution Fee). 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 User and a monthly fee of \$0.10 per Non-Professional User.<sup>9</sup>

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 to an unlimited number of Professional and Non-Professional Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and is assessed in addition to the Distribution Fee, which the Exchange proposes to make clear in the Fee Schedule. 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.<sup>10</sup> 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 Distributor must provide the Exchange with a count of the total number of Professional and Non-Professional Users

User so long as each device is dedicated specifically to that individual. If a Distributor entitles one or more individuals to use the same device, the Distributor should include only the individuals, and not the device, in the count.

<sup>9</sup>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.

<sup>10</sup>For example, if a Distributor (e.g., Refinitiv) that distributes C2 Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B (which "entities" redistribute BZX Options Top to its respective Users) and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

of C2 Options Top.<sup>11</sup> 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.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>13</sup> 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 the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>14</sup> 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>15</sup> The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> which

<sup>11</sup> See Cboe Global Markets north American Data Policies.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(8).

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

<sup>16</sup> 15 U.S.C. 78f(b)(4).

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 18% of the market share.<sup>17</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>18</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 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.<sup>19</sup> Accordingly, Exchange top-of-book data is widely available 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. 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

<sup>17</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

<sup>18</sup> See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIA 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>19</sup> 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.

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>20</sup> from OPRA for the same classes or series of options that are included in the proprietary data feed (including for exclusively listed products), and proprietary data feeds cannot be used to meet that particular requirement.<sup>21</sup> As such, all proprietary data feeds are purely optional and only those that deem the product to be of sufficient overall value and usefulness would purchase it.

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>22</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 a competitor 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 to be in line with User fees assessed by other exchanges for similar data.<sup>23</sup> Moreover, Display Only Service Users will now be subject to lower fees as the Exchange proposes to significantly reduce the monthly User fees from \$50 per Device or User ID for Display Only Service User to \$5.00 per Professional User or \$0.10 per Non-Professional User. Although External Distributors are currently only subject to a User fee for external Users that are Display Only Service Users, the proposed fee for all external Users (which are likely to be Non-Professional Users) is significantly lower (*i.e.*, \$0.10 per Non-Professional User) than the current \$50 User fee. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors for all Users, not just Display Only Service users, 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>24</sup> The Exchange also believes offering C2 Options Top to Non-Professional Users at a rate lower than the rate for

<sup>23</sup> 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 is not included in the above comparison because there are no User fees based on Professional or Non-Professional classification, but rather a \$50 per month, more Device or User ID fee for Display Only Service users only. Further there are no fees for any internal Users.

<sup>24</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).

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.

Although Internal Distributors do not currently pay any User fees for C2 Options Top, the Exchange believes its reasonable, equitable and not unfairly discriminatory to start assessing User fees, as internal and external users will be treated the same. Additionally, other exchanges also assess User fees for internal users of similar data, including the Exchange’s affiliates.<sup>25</sup> Moreover, the proposed rates Internal Distributors will be subject to for User fees are in line with User fees assessed by other exchanges for similar data.<sup>26</sup> The Exchange believes the proposed monthly User fees for which Internal Distributors of C2 Options Top will now be subject to are equitably allocated because they would be charged on an equal basis for all internal Users that receive C2 Options Top.

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 Distributors 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

<sup>25</sup> See BZX Options Fees Schedule, Market Data Fees and EDGX Options Fees Schedule, Market Data Fees. See also Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees).

<sup>26</sup> See *supra* note 23.

<sup>20</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>21</sup> *Id.*

<sup>22</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

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 and providing more consistency with definitions used in the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies. Doing so would ensure consistent terms amongst the Exchange and its affiliates, as well as the Exchange's data agreements and policies, 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. For example, Top-of-book data is broadly disseminated by competing U.S. options exchanges. 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. As discussed, the proposed fees would apply to all similarly situated Distributors 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 Act<sup>27</sup> and paragraph (f) of Rule 19b-4<sup>28</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

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

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-C2-2023-012 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-C2-2023-012. 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

<sup>27</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>28</sup> 17 CFR 240.19b-4(f).

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-C2-2023-012 and should be submitted on or before June 7, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-10470 Filed 5-16-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97484; File No. SR-OCC-2023-004]

### Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Proposed Rule Change by The Options Clearing Corporation To Amend and Enhance the Options Clearing Corporation's Model Risk Management Policy

May 11, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 27, 2023, the Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would amend and enhance OCC's Model Risk Management Policy. The Model Risk Management Policy is included as confidential Exhibit 5 to File Number

SR-OCC-2023-004. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.

#### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (1) Purpose

This proposed rule change would make certain changes to OCC's Model Risk Management Policy ("MRM Policy" or "Policy") to enhance the manner in which OCC manages the risk models and methodologies used in connection with OCC's business. OCC's use of risk models exposes OCC to model risk. Model risk is the potential for adverse consequences from decisions based on incorrect or misused model outputs. For example, a model that is not managed properly could potentially cause OCC to over-collect or under-collect the appropriate amount of collateral to cover credit risk posed by Clearing Members. OCC notes that the MRM Policy is part of a broader framework regarding model risk management that is designed to further the appropriate design, validation, and operation of OCC's Risk Models.<sup>3</sup>

The MRM Policy is designed to outline OCC's framework for managing model risk and to define the roles and responsibilities throughout the risk model and methodology lifecycle.<sup>4</sup> As detailed further below, the proposed changes to the MRM Policy primarily include amendments designed to: (1) more comprehensively address risk

methodologies rather than just the underlying risk models; (2) revise the roles and responsibilities of various individuals, groups, and departments with respect to OCC's managing of model risk; (3) reflect certain non-substantive changes, such as renaming certain policies and procedures; and (4) add a description of certain "Risk Applications" and "User Developed Applications" used by OCC.

###### Risk Methodologies

OCC proposes to modify the MRM Policy to more directly contemplate "Risk Methodologies" rather than just "Risk Models." As currently defined in the MRM Policy, a Risk Model refers to any quantitative method or approach that applies statistical, economic, financial, or mathematical theories, techniques, and/or assumptions to process inputs into quantitative estimates, forecasts, or projections and can also be a quantitative method with inputs that are qualitative or based on business judgment. As also currently defined in the MRM Policy, a Methodology refers to a collection of Risk Models that are used to estimate financial risk exposures.

OCC proposes to specify in the MRM Policy that Risk Models are integrated into "Risk Methodologies" to broaden and align OCC's internal model risk policies and procedures by the adoption of the more holistic and comprehensive Risk Methodologies framework consisting of a collection of components, related inputs and outputs, and potentially other tools and applications, as explained further below. Specifically, OCC proposes to replace the definition of Methodology with a definition of a "Risk Methodology," providing that a Risk Methodology is a collection of Risk Models and related inputs and outputs, which are used to estimate or compute a distinct aspect of OCC's credit (*i.e.*, Clearing Fund and margin) and liquidity resources.<sup>5</sup> The purpose of the expanding the definition in this way is to facilitate a more holistic view of the

<sup>5</sup> Under OCC's current MRM Policy, Risk Models are further defined in specific contexts whereby the MRM Policy states that Risk Models are "credit risk models (*i.e.*, Clearing Fund), and margin system and related models (*i.e.*, STANS), and liquidity risk models." As part of the broader shift in this proposed rule change from a focus on individual Risk Models to Risk Methodologies, OCC proposes to incorporate these contexts into the definition of Risk Methodologies, providing that Risk Methodologies "are used to estimate or compute a distinct aspect of OCC's credit (*i.e.*, Clearing Fund and margin) and liquidity resources." The proposed new definition of Risk Methodologies would capture all existing Risk Models that address OCC's credit, margin and liquidity resources.

<sup>3</sup> For example, OCC's Margin Policy is also part of OCC's framework regarding model risk management in that it is designed to be consistent with the requirement in Rule 17Ad 22(e)(6)(vii) that OCC's policies and procedures provide for a risk-based margin system that requires a margin model validation not less than annually. See 17 CFR 240.17Ad-22(e)(6)(vii).

<sup>4</sup> The Risk Methodology and Risk Model lifecycle generally includes the development, implementation, monitoring, and independent validation of Risk Methodologies and Risk Models.

<sup>29</sup> 17 CFR 200.30-3(a)(12).

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

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