

manner that is inconsistent with title 39, *id.* at 9–10, the Commission lacks jurisdiction over the claim. Second, a claim for retaliation does not fall within any of the enumerated bases of the Commission's complaint jurisdiction as it does not implicate the requirements of 39 U.S.C. chapter 36; 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or any regulations promulgated under any of these provisions.<sup>8</sup>

Complainant objects to the Postal Service's alleged noncompliance with its own regulations, not to the regulations themselves. Thus, the Complaint does not fall within the Commission's jurisdiction under 39 U.S.C. 401(2) and neither of the first two claims are encompassed under the Commission's complaint jurisdiction. Therefore, the Postal Service's Motion to Dismiss is granted as to these two claims.

#### B. Undue Discrimination

Complainant's third claim alleges a potential violation of 39 U.S.C. 403(c) because other similarly situated members of his community are receiving delivery of oversized packages to their doors. Complaint at 4–6. The Postal Service is prohibited from making any undue or unreasonable discrimination among mail users. 39 U.S.C. 403(c). When evaluating claims of discrimination among mail users, the Commission follows the guidance set forth in *Egger v. USPS*, 436 F. Supp. 138 (W.D. Va. 1977). In *Egger*, the district court held that it is "obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable." *Egger*, 436 F. Supp. at 142. Thus, the Postal Service may differentiate among customers where the differences have a rational basis.<sup>9</sup>

Thus, in order to state a claim for a violation of 39 U.S.C. 403(c), the Commission requires a complainant to plead three things: (1) the complainant is receiving less favorable services than those provided to one or more other postal customers, (2) the complainant is similarly situated to those postal customers receiving more favorable service, and (3) there is no rational or legitimate basis for denying the complainant the more favorable service currently being provided to those similarly situated postal customers.<sup>10</sup>

The Postal Service, solely for the purposes of the Motion to Dismiss, accepts that Complainant can meet the first two prongs. Motion to Dismiss at 12. The third prong of the test used to determine whether a 403(c) claim is actionable is that there is no rational or legitimate basis for the Postal Service to deny the Complainant the more favorable rates or terms and conditions offered to others.<sup>11</sup> The Postal Service argues that delivery to homes outside of the half-mile radius violates Postal Service policy, and that constitutes a legitimate basis for the Postal Service to deny Mr. Edwards more favorable rates, terms, or conditions offered to others. Motion to Dismiss at 12–13.

The Commission finds that this argument ignores the fact that, if Complainant can meet the first two prongs of the test, it means that other customers are receiving those exact "rates or terms and conditions" in violation of Postal Service policy. Accepting the Postal Service's argument on this point would in effect request the Commission to ignore potential discrimination because its preferential treatment of other customers violates its own policies. Thus, the Commission finds the Postal Service's arguments on the Complaint's failure to state a claim unpersuasive. Therefore, the Postal Service's Motion to Dismiss is denied as it relates to the potential violation of 39 U.S.C. 403(c) pursuant to 39 U.S.C. 3662(b).

The outstanding issues of fact required to resolve whether a violation of 39 U.S.C. 403(c) occurred are:

1. Whether any similarly situated postal customers in Complainant's neighborhood are receiving delivery of oversized packages to their doors.
2. Whether postal management followed non-discriminatory processes in the discontinuation of door delivery of oversized packages to Complainant's residence.

Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer to ascertain outstanding issues of material fact in this matter. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery. The presiding officer shall examine the disputed issues identified above and provide a public, written intermediate decision including findings of fact and

conclusions of law on the issues raised in this proceeding. 39 CFR 3010.335.

The Commission finds good cause to waive the appointment of an officer of the Commission designated to represent the interests of the general public in this proceeding as required by 39 CFR 30.30(c) because the violations alleged in the Complaint pertain solely to Complainant rather than the general public.

#### IV. Ordering Paragraphs

*It is ordered:*

1. The Commission finds that the Complaint of Mark Allan Edwards, filed July 7, 2023, raises material issues of fact.

2. The United States Postal Service's Motion to Dismiss the Complaint of Mark Allan Edwards, filed July 27, 2023, is granted on all grounds except for the claim related to the alleged violation of 39 U.S.C. 403(c).

3. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila as a presiding officer in this proceeding.

4. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery.

5. The presiding officer shall, pursuant to 39 CFR 3010.335, provide a public written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding.

6. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2023–20560 Filed 9–21–23; 8:45 am]

**BILLING CODE 7710-FW-P**

#### SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–037, OMB Control No. 3235–0031]

**Submission for OMB Review;  
Comment Request; Extension: Rule 17f–2(e)**

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of

<sup>8</sup> 39 U.S.C. 3662(a).

<sup>9</sup> See Docket No. C2015–2, Order Granting Motion to Dismiss, July 15, 2015, at 12 (Order No. 2585).

<sup>10</sup> See Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491)

(citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

<sup>11</sup> Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

extension of the previously approved collection of information provided for in Rule 17f-2(e) (17 CFR 240.17f-2(e)), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Rule 17f-2(e) requires every member of a national securities exchange, broker, dealer, registered transfer agent, and registered clearing agency (“covered entities”) claiming an exemption from the fingerprinting requirements of Rule 17f-2 to make and keep current a statement entitled “Notice Pursuant to Rule 17f-2” (“Notice”) containing the information specified in paragraph (e)(1) to support their claim of exemption.

Rule 17f-2(e) contains no filing requirement. Instead, paragraph (e)(2) requires covered entities to keep a copy of the Notice in an easily accessible place at the organization’s principal office and at the office employing the persons for whom exemptions are claimed and to make the Notice available upon request for inspection by the Commission, appropriate regulatory agency (if not the Commission), or other designated examining authority. Notices prepared pursuant to Rule 17f-2(e) must be maintained for different lengths of time depending on the type of entity maintaining the Notice. Under Rule 240.17a-1, every registered clearing agency must keep and preserve at least one copy of all documents made or received by it in the course of its business for a period of not less than five years. Under Rule 240.17a-4 certain members of national securities exchanges, brokers, and dealers must maintain the Notice during the life of their enterprise. Under Rule 240.17Ad-7, registered transfer agents must maintain the Notice in an easily accessible place. The recordkeeping requirement under Rule 17f-2(e) assists the Commission and other regulatory agencies with ensuring compliance with Rule 17f-2. This rule does not involve the collection of confidential information.

We estimate that approximately 75 respondents will incur an average burden of 30 minutes per year to comply with this rule, which represents the time it takes for a staff person at a covered entity to properly document a claimed exemption from the fingerprinting requirements of Rule 17f-2 in the required Notice and to properly retain the Notice according to the entity’s record retention policies and procedures. The total annual burden for all covered entities is approximately 38 hours (75 entities × .5 hours, rounded up).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Written comments and recommendations for the proposed information collection should be sent by October 23, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: September 18, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-20528 Filed 9-21-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98420; File No. SR-CboeBZX-2023-071]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule Related to the Options Regulatory Fee

September 18, 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 September 12, 2023, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II, 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 BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend its Fee Schedule related to the Options Regulatory Fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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 increase the Options Regulatory Fee (“ORF”) from \$0.0001 per contract to \$0.0003 per contract.<sup>3</sup>

The ORF is assessed by BZX Options to each Member for options transactions cleared by the Member that are cleared by the Options Clearing Corporation (“OCC”) in the customer range, regardless of the exchange on which the transaction occurs. In other words, the Exchange imposes the ORF on all customer-range transactions cleared by a Member, even if the transactions do not take place on the Exchange. The ORF is collected by OCC on behalf of the Exchange from the Clearing Member or non-Member that ultimately clears the transaction. With respect to linkage transactions, BZX Options reimburses its routing broker providing Routing Services (pursuant to BZX Options Rule 21.9) for options regulatory fees it incurs in connection with the Routing Services it provides.

Revenue generated from ORF, when combined with all of the Exchange’s other regulatory fees and fines, is designed to recover a material portion of the regulatory costs to the Exchange of the supervision and regulation of Member customer options business including performing routine surveillances, investigations,

<sup>3</sup> The Exchange initially filed the proposed fee change on September 1, 2023 (SR-CboeBZX-2023-066). On September 12, 2023, the Exchange withdrew that filing and submitted this filing.

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

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