

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

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Assistant Secretary.

[FR Doc. 2024–25532 Filed 11–1–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101461; File No. SR–CboeBZX–2024–104]

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

October 29, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on October 18, 2024, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “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 BZX Exchange, Inc. (the “Exchange” or “BZX Options”) proposes to amend its Fee 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/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 update its Fee Schedule to provide a temporary 20% discount on fees assessed to Exchange Members³ and non-Members that purchase \$20,000 or more of ad hoc purchases of BZX Options Historical Depth Data (“Historical Depth Reports”), effective October 18, 2024 through December 31, 2024.

By way of background, the Exchange currently makes available for purchase Depth Data, which is a daily archive of the Exchange’s depth of book real-time feed, which provides depth-of-book quotations and execution information based on options orders entered into the System. The Exchange also offers Historical Depth Data, which offers such data on a historical basis, *i.e.* T+1 or later. The Historical Depth Report is a completely voluntary product, in that the Exchange is not required by any rule or regulation to make this data available and that potential customers may purchase it on an ad-hoc basis only if they voluntarily choose to do so.

Cboe LiveVol, LLC (“LiveVol”), a wholly owned subsidiary of the Exchange’s parent company, Cboe Global Markets, Inc., makes the Historical Depth Report available for purchase to Users on the LiveVol DataShop website (data.cboe.com). The Historical Depth Data is available for purchase to Members and Non-Members; the Exchange charges a fee per month of historical data of \$500.⁴ The Historical Depth Report provided on a historical basis is only provided to data recipients for internal use only, and thus, no redistribution will be permitted. The Exchange notes that the Historical Depth Report is subject to direct competition from other

exchanges, as other exchanges offer similar products for a fee.⁵

The Exchange’s equities platform (“BZX Equities”) and affiliated equities and options exchanges (*i.e.*, Cboe Exchange, Inc. (“Cboe Options”), Cboe EDGX Exchange, Inc. (“EDGX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe C2 Exchange, Inc. (“C2 Options”) and Cboe EDGA Exchange, Inc. (“EDGA”) (collectively, “Affiliates”) also offer similar data products.⁶ Particularly, each of the Exchange’s Affiliates offer a daily and historical archive of their depth of book real-time feed with execution information based on their trading activity that is substantially similar to the information provided by the Exchange through its Depth Data products.

The Exchange proposes to provide a temporary pricing incentive program in which Members or Non-Members that purchase Historical Depth Reports will receive a percentage fee discount where specific purchase thresholds are met. Specifically, the Exchange proposes to provide a temporary 20% discount for ad-hoc purchases of Historical Depth Data of \$20,000 or more.⁷ The proposed program will apply to all market participants irrespective of whether the market participant is a new or current purchaser; however, the discount cannot be combined with any other discounts offered by the Exchange. The Exchange intends to introduce the discount program beginning October 18, 2024, with the program remaining in effect through December 31, 2024. The Exchange also notes that it previously adopted similar discount programs for other historical data products offered by the Exchange.⁸

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

⁵ See, e.g., <https://www.nasdaqtrader.com/Trader.aspx?id=DPPPriceListOptions#nom>; and https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Fee_Schedule.pdf.

⁶ See, for example, EDGX Fee Schedule, Cboe Fee Schedule, BYX Fee Schedule.

⁷ The discount will apply on an order-by-order basis. The discount will apply to the total purchase price, once the \$20,000 minimum purchase is satisfied (for example, a qualifying order of \$25,000 would be discounted to \$20,000, *i.e.* receive a 20% discount of \$5,000).

⁸ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR–CboeBZX–2023–094) and Securities Exchange Act Release No. 100371 (June 18, 2024), 89 FR 53140 (June 25, 2024) (SR–CboeBZX–2024–047).

¹⁶ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ See Rule 1.5(n) (“Member”). The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.

⁴ As part of the proposed rule change, the Exchange proposes to remove the fee related to delivery per 1TB drive of data as the Exchange no longer provides 1TB drives.

Section 6(b) of the Act.⁹ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ 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)¹¹ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee changes will further broaden the availability of U.S. options market data to investors consistent with the principles of Regulation NMS. The Exchange believes the dissemination of historical depth of book data via Historical Depth Reports benefits investors through increased transparency and may promote better informed trading, as well as research and studies of the options industry. Nevertheless, the Exchange notes that such data is not necessary for trading and as noted above, is entirely optional. Moreover, several other exchanges offer a similar data product which offer the same type of data content through similar reports.¹²

The Exchange also operates in a highly competitive environment. Indeed, there are currently 17 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 17% of the market share.¹³ 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.”¹⁴ 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 Historical Depth Reports.

The Exchange believes that the proposed incentive program for any Member or non-Member who purchases Historical Depth Reports is reasonable because such purchasers would receive a 20% discount for purchasing \$20,000 or more worth of Historical Depth Reports. The Exchange believes the proposed discount is reasonable as it will give purchasers the ability to use and test the Historical Depth Reports at a discounted rate, prior to purchasing additional months or a monthly subscription, and will therefore encourage and promote users to purchase the Historical Depth Reports. Further, the proposed discount is intended to promote increased use of the Exchange’s Historical Depth Reports by defraying some of the costs a purchaser would ordinarily have to expend before using the data product. The Exchange believes that the proposed discount is equitable and not unfairly discriminatory because it will apply equally to all Members and non-Members who purchase Historical Depth Reports. Lastly, the purchase of this data product is discretionary and not compulsory. Indeed, no market participant is required to purchase the Historical Depth Reports, and the Exchange is not required to make Historical Depth Reports available to all investors. Potential purchasers may request the data at any time if they believe it to be valuable or may decline to purchase such data. As noted above,

the Exchange has previously adopted this discount program at other times.¹⁵

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

The Exchange does not believe that the proposed rule change will impose 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 in which the Exchange must continually adjust its fees to remain competitive. Because competitors are free to modify their own fees in response, including the adoption of similar discounts to those fees, the Exchange believes that the degree to which fee changes (including discounts and rebates) in this market may impose any burden on competition is extremely limited. As discussed above, the Exchange’s Historical Depth Reports offering is subject to direct competition from several other options exchanges that offer similar data products. Moreover, purchase of Historical Depth Reports is optional. It is designed to help investors understand underlying market trends to improve the quality of investment decisions, but is not necessary to execute a trade.

The proposed rule changes are grounded in the Exchange’s efforts to compete more effectively. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges. Further, the Exchange believes that these changes will not cause any unnecessary or inappropriate burden on intermarket competition, as the proposed incentive program applies uniformly to any purchaser of Historical Depth Reports.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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)

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ *Id.*

¹² See *supra* note 4.

¹³ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (October 1, 2024), available at https://markets.cboe.com/us/options/market_statistics/.

¹⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

¹⁵ See Securities Exchange Act Release No. 99027 (November 28, 2023), 88 FR 84028 (December 1, 2023) (SR-CboeBZX–2023–094) and Securities Exchange Act Release No. 100371 (June 18, 2024), 89 FR 53140 (June 25, 2024) (SR-CboeBZX–2024–047).

of the Act¹⁶ and paragraph (f) of Rule 19b-4¹⁷ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-CboeBZX-2024-104 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-2024-104. 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 (<https://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 a.m. and 3 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-2024-104 and should be submitted on or before November 25, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

Sherry R. Haywood,

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[FR Doc. 2024-25535 Filed 11-1-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101468; File No. S7-2024-07]

Notice of an Application of the New York Stock Exchange LLC for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment

October 29, 2024.

On April 12, 2024, the Securities and Exchange Commission (the "Commission") received an application from the New York Stock Exchange LLC (the "NYSE") to amend an exemption granted to the NYSE on November 16, 2006 (the "2006 Exemption")¹ pursuant to Section 36² of the Securities Exchange Act of 1934 (the "Exchange Act"),³ in accordance with the procedures set forth in Exchange Act Rule 0-12.⁴ The 2006 Exemption granted exemptive relief from Section 12(a) of the Exchange Act⁵ to permit the NYSE's members, brokers and dealers to trade debt securities not registered

under the Exchange Act on the NYSE's Automated Bond System, now known as "NYSE Bonds," subject to certain conditions. One of those conditions is that an issuer of the debt securities, or the issuer's parent if the issuer is a wholly-owned subsidiary, have at least one class of common or preferred equity securities that is (i) registered under Section 12(b) of the Exchange Act and (ii) listed on the NYSE.⁶ The NYSE seeks to amend the 2006 Exemption by revising the condition that the class of listed common or preferred equity securities be listed on the NYSE. The NYSE requests that debt securities not registered under the Exchange Act be permitted to trade on NYSE Bonds if their issuer, or the issuer's parent if the issuer is a wholly-owned subsidiary, has a class of common or preferred equity securities listed on any registered national securities exchange, not only the NYSE. All other terms of the 2006 Exemption would remain in effect.⁷ We are publishing this notice to provide interested persons with an opportunity to comment.

I. Background

Section 12(a) of the Exchange Act provides in relevant part that it "shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange." Section 12(b)⁸ of the Exchange Act dictates how the registration referred to in Section 12(a) must be accomplished. Accordingly, all equity and debt securities that are not "exempted securities"⁹ or are not otherwise exempt from Exchange Act registration must be registered by the issuer under the Exchange Act before a member, broker or dealer may trade that class of securities on a national securities exchange.

¹⁸ 17 CFR 200.30-3(a)(12).

¹ Order Granting the New York Stock Exchange, Inc.'s (n/k/a the New York Stock Exchange LLC) Application for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934, Release No. 34-54766 (Nov. 16, 2006) [71 FR 67657 (Nov. 22, 2006)].

² 15 U.S.C. 78mm. Section 36(a)(1) of the Exchange Act gives the Commission the authority to exempt any person, security or transaction or any class or classes of persons, securities or transactions, conditionally or unconditionally, from any Exchange Act provision by rule, regulation or order, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors.

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 240.0-12. Exchange Act Rule 0-12 sets forth the procedures for filing applications for orders for exemptive relief pursuant to Section 36.

⁵ 15 U.S.C. 78l(a).

⁶ See 2006 Exemption, *supra* note 1. See also Letter from Mary Yeager, New York Stock Exchange, to Jonathan G. Katz, Secretary, Securities and Exchange Commission, dated May 26, 2005 (NYSE's request for exemptive relief); Notice of an Application of the New York Stock Exchange, Inc. for an Exemption Pursuant to Section 36 of the Securities Exchange Act of 1934 and Request for Comment, Release No. 34-51998 (July 8, 2005) [70 FR 40748 (July 14, 2005)].

⁷ The NYSE's application for exemptive relief is included as an Appendix to this release.

⁸ 15 U.S.C. 78l(b).

⁹ An exempted security may be traded on a national securities exchange absent Exchange Act registration. Section 3(a)(12) of the Exchange Act [15 U.S.C. 78c(a)(12)] defines exempted security to include securities such as government securities, municipal securities, various trust fund interests, pooled income fund interests and church plan interests.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).