SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34832; 812–15353]

Carlyle AlpInvest Private Markets Fund, et al.

February 13, 2023.

AGENCY: Securities and Exchange Commission ("Commission" or "SEC").

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares of beneficial interest with varying sales loads and to impose asset-based distribution and/or service fees.

APPLICANTS: Carlyle AlpInvest Private Markets Fund (the "Initial Fund"), and AlpInvest Private Equity Investment Management, LLC (the "Adviser").

FILING DATE: The application was filed on June 16, 2022 and amended on July 20, 2022, November 10, 2022 and January 24, 2023.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving the relevant Applicant with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on March 10, 2023, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: Cameron Fairall, Carlyle AlpInvest

Private Markets Fund, One Vanderbilt Avenue, Suite 3400, New York, NY 10017; Michael G. Doherty, *Michael.Doherty@ropesgray.com* and Gregory C. Davis, *Gregory.Davis@ ropesgray.com.*

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' third amended and restated application, dated January 24, 2023, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/ legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03342 Filed 2–16–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96890; File No. SR– CboeBZX–2023–004]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt a New Data Product Called the Cboe One Options Feed

February 13, 2023.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2023, Cboe BZX Exchange, Inc. ("Exchange" or "BZX") 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.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

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 adopt a new data product called the Cboe One Options Feed. 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 establish a new market data product called the Cboe One Options Feed. The Exchange also proposes to amend Exchange Rule 21.15(b) to add a description of the Cboe One Options Feed under new subparagraph (7) [sic]. As described more fully below, the Cboe One Options Feed is a data feed that that will offer top of book quotations and execution information based on options orders entered into the Exchange System and its affiliated options exchanges Cboe Exchange, Inc. ("Cboe Options"), Cboe C2 Exchange, Inc. ("C2 Options"), and Cboe EDGX Exchange, Inc. ("EDGX Options") (collectively, the "Affiliates" and collectively with the Exchange, the "Cboe Options Exchanges") and for which the Cboe Options Exchanges report quotes under the OPRA Plan.[3]

Currently, the Exchange offers BZX Options Top feed, which is an uncompressed data feed that offers top-of-book quotations and last sale

[3] The Exchange understands that each of the Cboe Options Exchanges will separately file substantially similar proposed rule changes to implement Cboe One Options Feed and its related fees.

information based on options orders entered into the Exchange's System. The BZX Options Top feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in BZX Options Top. The Exchange notes that BZX Options Top is ideal for market participants requiring both quote and trade data. The Exchange's Affiliates also offer similar top-of-book data.[4] 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 BZX Options Top feed. Further, the quote and last sale data contained in the Exchange's Affiliates top feeds is identical to the data sent to OPRA for redistribution to the public.

The Exchange now proposes to adopt a market data product that 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 will offer a comprehensive and highly representative view of U.S. options pricing to market participants. More specifically, the proposed 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, for options traded on the Exchange, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed. The Cboe One Options Feed will also consist of Symbol Summary,[5] Market Status,[6] Trading

Status,[7] and Trade Break[8] messages for the Exchange and each of its Affiliates.

The Exchange notes that the Exchange and its affiliated equities exchanges Cboe BYX Exchange, Inc. ("BYX"), Cboe EDGA Exchange, Inc. ("EDGA") and Cboe EDGX Exchange, Inc. ("EDGX Equities") already offer a similar data product, the Cboe One Summary Feed, which contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and each of the Exchange's affiliated equities exchanges as well as last sale information for each of the Exchange and the Exchange's affiliated equities exchanges.[9] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages for the Exchange and each of its affiliated equities exchanges.

Particularly, the Cboe One Options Feed will offer market participants with a new option for receiving Cboe market data that provides a consolidated view of activity on all Cboe options exchanges. The Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants (*e.g.,* retail brokerage firms) that are interested in receiving the aggregate top of book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. For example, today an entity can subscribe to various market data products offered by single exchanges and distribute or resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings.[10]

Distributors and vendors may incur administrative costs when consolidating and augmenting the data to meet their customer's need. Consequently, distributors and/or vendors may simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. The Exchange believes those same distributors and/or vendors may be interested in distributing the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges. The Exchange therefore believes that the Cboe One Options Feed would provide high-quality, comprehensive last sale and top-of-book data for the Cboe Options Exchanges in a unified view and respond to demand for such a product.

The Exchange also notes that it has taken into consideration its affiliated relationship with its Affiliates in its design of Cboe One Options Feed to assure distributors and/or vendors would be able to resell and offer a similar product on the same terms as the Exchange, both from a perspective of latency and cost.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution by a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with Cboe Options, EDGX Options and C2 Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One

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[4] *See* Cboe Data Services, LLC Fee Schedule, C2 Options Exchange Fees Schedule, Cboe Data Services, LLC Fees, and EDGX Rule 21.15.

[5] The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

[6] 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.

[7] 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).

[8] 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.

[9] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).

[10] 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 resells 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 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.

Options Feed, each of which is available to other vendors: the BZX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the EDGX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any entity would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.[11] Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to its customers, whether those customers are

also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain the underlying Cboe Options Exchanges' top-of-book data feeds. The 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 data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed. Additionally, the Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed pricing would therefore enable a vendor to create a competing product based on the individual data feeds and charge its customer a fee that it believes 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.

Implementation

The Exchange will announce when it intends to make available the Cboe One Options feed, subject to the effectiveness of the proposed rule change and the effectiveness of a rule filing to establish the fees (via a separate rule filing).[12]

2. Statutory Basis

The Exchange believes that the proposed Cboe One Options Feed is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14]

in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes this proposal is consistent with Section 6(b)(5) of the Act because it protects investors and the public interest and promotes just and equitable principles of trade by providing investors with new options for receiving market data as requested by market participants and 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.[15]

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act [16] in that 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.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to consumers of such data. It was believed that this authority would expand the amount of data available to users and consumers of such data and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed Cboe One Options Feed would further broaden the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. Particularly, the Exchange believes the proposed Cboe One Options Feed promotes transparency by disseminating the Cboe Options Exchanges' market data more widely through additional distribution channels, which will enable investors to better monitor trading activity on the Cboe Options Exchanges, and thereby serve the public interest. The Exchange is providing additional distribution channels because it believes market participants may be more inclined to purchase a combined data feed and redistribute it. Particularly, the Exchange believes that market

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[11] The Exchange notes that it does not own the facilities in which its servers are located but is aware that there are vendors that currently locate their servers in the same facilities as the Exchange and on an equal basis as the Exchange. The Exchange is not aware of any reasons why vendors would not be able to locate their servers on an equal basis as the Exchange on an on-going basis.

[12] The Exchange also represents that should it wish to modify the proposed Cboe One Options Feed data product in the future, it will submit a proposed rule change as required under the Act.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(8).

[16] 15 U.S.C. 78k–1.

participants would welcome a market data product that would provide high-quality, comprehensive top-of-book and last sale data for the Cboe Options Exchanges in a unified view (*i.e.,* the Cboe One Options Feed).

The Exchange also 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.[17] 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. While there is not currently an aggregated top-of-book data product offered at competitor options exchanges, the quote and last sale data contained in the proposed Cboe One Options Feed is identical to data already provided in the Exchange's and its Affiliate's individual top-of-book data products as well as to the data sent to OPRA for redistribution to the public.[18] Accordingly, the Exchange believes market participants can substitute any individual or consolidated exchange top-of-book feeds with similar feeds from other exchanges and/or through OPRA with respect to the data contained in the proposed Cboe One Options Feed. Exchange top-of-book data is therefore widely available today from a number of different sources.

Moreover, exchange top-of-book data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors or vendors are required by any rule or regulation to make this data available. Accordingly, distributors and vendors 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, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As

such, all proprietary data feeds are optional.

Similar to exchanges' individual top-of-book data feeds, the proposed Cboe One Options Feed would be distributed and purchased on a voluntary basis, in that neither the Exchange, its Affiliates, nor market data distributors or vendors are required by any rule or regulation to make this data feed available. Accordingly, distributors and vendors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. The Exchange believes that the proposed Cboe One Options Feed will offer an alternative to subscribing to the Cboe Options Exchanges four individual top-of-book data feeds. Also, as noted above, there is a history of offering similar consolidated data products in the equities industry. Indeed, the Exchange and its affiliated equities exchanges offer the Cboe One Summary Feed, which is a substantially similar data product which contains the aggregate BBO of all displayed orders for securities (instead of options) traded on the Cboe's equities exchanges, along with last sale information.[19] The Cboe One Summary Feed also consists of Symbol Summary, Market Status, Trading Status, and Trade Break messages.[20]

The Exchange believes the proposal would not permit unfair discrimination because the product will be available to all market data distributors and vendors on an equivalent basis. Any distributor or vendor that wishes to instead purchase one or more of the individual data feeds offered by the Cboe Options Exchanges separately will still be able to do so. Further, the Exchange and its Affiliates will continue to make the data contained in the proposed Cboe One Options Feed available no earlier than the time at which the exchanges send that data to OPRA. Market participants may therefore also substitute Cboe One Options Feed with feeds from other exchanges and/or through OPRA.

In addition, the Exchange does not believe that the proposal would permit unfair discrimination among customers, brokers, or dealers and thus is consistent with the Act because the Exchange will be offering the product on terms that a vendor could offer a competing product. Specifically, the proposed data feed merely represents an aggregation and consolidation of data contained in existing, previously filed individual market data products of the Cboe Options Exchanges. As such, a

vendor could similarly obtain the underlying data feeds and perform a similar aggregation and consolidation function to create the same data product as being proposed with the same latency and cost as the Exchange.

The Exchange has taken into consideration its affiliated relationship with Cboe Options, EDGX Options and C2 Options in its design of Cthe Cboe One Options Feed to assure that distributors and/or vendors would be able to offer a similar product on the same terms as the Exchange, both from the perspective of latency and cost. As discussed above, the Exchange proposes to offer the Cboe One Options Feed voluntarily in response to demand from market participants such as retail brokerage firms that are interested in receiving and distributing the top-of-book quotation and last sale information from the Cboe Options Exchanges as part of a single data feed. Specifically, Cboe One Options Feed can be used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of the Cboe One Options Feed. The Cboe One Options Feed would help protect a free and open market by providing market participants additional choices in receiving this type of market data, thus promoting competition and innovation.

With respect to latency, the path for distribution by the Exchange of Cboe One Options Feed would not be faster than the path for distribution a vendor that independently created a Cboe One Options Feed-like product could distribute its own product. As such, the proposed Cboe One Options data feed is a data product that a vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and is affiliated with Cboe Options, EDGX Options and C2 Options, the Exchange represents that the source of the market data it would use to create the proposed Cboe One Options Feed is available to other vendors. Specifically, the Exchange would use the following data feeds to create the proposed Cboe One Options Feed, each of which is available to other vendors: the BZX Options Top, Cboe Options Top Data, the C2 Options Top Data, and the EDGX Options Top Feeds. The Cboe Options Exchanges will continue to make available these individual underlying feeds, and thus, the source of the market data it would use to create the proposed Cboe One Options feed is the same as the source available to other vendors.

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[17] *See* Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (January 9, 2023), available at *https://markets.cboe.com/us/options/ market_statistics/*.

[18] The Exchange notes that it and its Affiliates, make available their respective top-of-book data and last sale data that is included in each exchange's top-of-book data feed no earlier than the time at which the Exchange sends that data to OPRA.

[19] *See* BZX Rule 11.22(j), BYX Rule 11.22(i), EDGA Rule 13.8(b) and EDGX Rule 13.8(b).
[20] *Id.*

In order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process any vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed. Therefore, a vendor that is located in the same facilities as the Exchange could obtain the underlying data feeds from the Cboe Options Exchanges on the same latency basis as the system that would be performing the aggregation and consolidation of the proposed Cboe One Options Feed and provide the same type of product to its customers with the same latency they could achieve by purchasing the Cboe One Options Feed from the Exchange. As such, the Exchange would not have any unfair advantage over vendors with respect to obtaining data from the individual Cboe Options Exchanges. In fact, the technology supporting the Cboe One Options Feed would similarly need to obtain the Exchange's data feed as well and even this connection would be on a level playing field with a vendor located at the same facility as the Exchange. The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to customers, whether those customers are also located in the same data center or not.

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed, which would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed to offer and resell. The pricing the Exchange would charge for the Cboe One Options Feed would not be lower than the cost to a vendor (or distributor) to obtain the underlying Cboe Options Exchanges' top-of-book data feeds. The pricing the Exchange would charge clients 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 data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange intends to propose for the Cboe One Options Feed would be equal to the combined fees for subscribing to each individual data feed.[21] The Exchange also intends to propose a separate ''Data Consolidation Fee'', which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. The intended proposed fees would therefore enable a vendor to create a 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. 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.

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. Because the Exchange and its affiliates, along with other exchanges already offer the similar underlying data products, the Exchange's proposed Cboe One Options Feed will enhance competition. This proposed new data feed provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted

by Regulation NMS.[22] As the Cboe Options Exchanges are consistently one of the top exchange operators by market share for U.S. options trading the data included within the Cboe One Options Feed will provide investors a new option for obtaining a broad market view, consistent with the primary goal of the market data amendments adopted by Regulation NMS.

The Exchange believes the Cboe One Options Feed will further enhance competition by providing distributors and vendors with a data feed that allows them to more quickly and efficiently integrate into their existing products. For example, today, vendors may subscribe to various market data products offered by single exchanges and resell that data, either separately or in the aggregate, to their customers as part of their own market data offerings. Distributors and vendors may incur administrative costs when consolidating and augmenting the data to meet their customer's need. Consequently, many distributors and/or vendors will simply choose to not take the data from each of the Cboe Options Exchanges because of the effort and cost required to aggregate data from separate feeds into their existing products. Those same distributors and/or vendors may therefore be interested in the Cboe One Options Feed as they may easily incorporate aggregated or summarized Cboe Options Exchanges' data into their own products without themselves incurring the costs of the repackaging and aggregating the data it would receive by purchasing each market data product offered by the individual Cboe Options Exchanges separately. The Exchange therefore believes that by providing market data that encompasses combined data from affiliated exchanges, the Exchange enables vendors with the ability to compete in the provision of similar content with other vendors, where they may not have done so previously if they were required to purchase the top-of-book feeds from each individual Cboe options exchanges separately.

Although the Exchange considers the acceptance of the Cboe One Options Feed by distributors and vendors as important to the success of the product, depending on their needs, such distributors and vendors may choose not to subscribe to the Cboe One Options Feed and may rather receive the Cboe Options Exchanges' individual market data products and incorporate them into their specific market data

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[21] For example, the combined external distribution fee for the individual data feeds of the Cboe Options Exchanges is $10,000 per month (*i.e.,* the monthly external distribution fee is $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). The monthly Professional User fee for the individual data feeds of the Cboe Options Exchanges is $30.50 per Professional User (*i.e.,* the monthly Professional User fee is $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 combined monthly Non-Professional User fee for the individual data feeds of the Cboe Options Exchanges is $0.60 per Non-Professional User (*i.e.,* the monthly Non-Professional User fee is $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).

[22] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

products. The Cboe One Options Feed simply provides another option for distributors and vendors to choose from when selecting a product that meets their market data needs.

Exchange Not the Exclusive Distributor of Cboe One Options Feed

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. As discussed above, 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 would charge for the Cboe One Options Feed would not be lower than the cost to a distributor or vendor to obtain the underlying data feeds. In addition, the pricing the Exchange would charge clients for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a distributor and/or vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange.

Latency

The Cboe One Options Feed is also not intended to compete with similar products offered by distributors. Rather, it is intended to assist them in incorporating aggregated and summarized data from the Cboe Options Exchanges into their own market data products that are provided to their customers. Therefore, distributors will receive the data, who will, in turn, make available Cboe One Options Feed to their end users, either separately or as incorporated into the various market data products they provide. As stated above distributors may prefer a product like the Cboe One Options Feed so that they may easily incorporate aggregated or summarized Cboe Options Exchange data into their own products without themselves incurring the administrative costs of repackaging and aggregating the data it would receive by subscribing to each market data product offered by the individual Cboe Options Exchanges.

Notwithstanding the above, the Exchange believes that vendors may create a product similar to Cboe One Options Feed based on the market data

products offered by the individual Cboe Options Exchanges with no greater latency than the Exchange. As discussed above, in order to create the Cboe One Options Feed, the Exchange will receive the individual data feeds from each Cboe Options Exchange and, in turn, aggregate and summarize that data to create the Cboe One Options Feed. This is the same process a vendor would undergo should it create a market data product similar to the Cboe One Options Feed to distribute to its customers. In addition, the servers of most vendors could be located in the same facilities as the Exchange, and, therefore, should receive the individual data feed from each Cboe Options Exchange at the same time the Exchange would for it to create the Cboe One Options Feed.

The Exchange has designed the Cboe One Options data feed so that it would not have a competitive advantage over a vendor with respect to the speed of access to those underlying data feeds. Likewise, the Cboe One Options data feed would not have a speed advantage vis-à-vis vendors located in the same data center as the Exchange with respect to access to their customers, whether those end users are also located in the same data center or not. Therefore, the Exchange believes that it will not incur any potential latency advantage that will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Cost

With regard to cost, the Exchange will file a separate rule filing with the Commission to establish fees for Cboe One Options Feed that would be designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The pricing the Exchange would charge clients 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 data feeds and offer a similar product on a competitive basis and with no greater latency than the Exchange. The Distribution and User (Professional and Non-Professional) fees that the Exchange proposes for the Cboe One Options Feed will be equal to the combined fees for subscribing to each individual data feed. Moreover, as discussed, the Exchange intends to propose a separate "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 believes 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.

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [23] and Rule 19b–4(f)(6) [24] 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.* Please include File Number SR–CboeBZX–2023–004 on the subject line.

[23] 15 U.S.C. 78s(b)(3)(A).
[24] 17 CFR 240.19b–4(f)(6).

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–2023–004. 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–CboeBZX–2023–004 and should be submitted on or before March 10, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–03331 Filed 2–16–23; 8:45 am]

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[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96904; File No. SR–NYSEARCA–2023–12]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 6.4–O

February 13, 2023.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 ("Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 6, 2023, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") a 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

The Exchange proposes to amend Rule 6.4–O (Series of Options Open for Trading), Commentary .07 regarding the Short Term Option Series Program. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, 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 self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.4–O (Series of Options Open for Trading), Commentary .07 (hereinafter "Commentary .07"). Specifically, the

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[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Exchange proposes to amend the Short Term Option Series Program to: (1) limit the number of Short Term Option Expiration Dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ TrustSM, Series 1 (QQQ), and iShares Russell 2000 ETF (IWM) from five to two expirations for Monday and Wednesday expirations; and (2) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations. This is a competitive filing and is substantially identical to a rule recently approved on Nasdaq ISE, LLC ("Nasdaq ISE").[4]

Curtail Short Term Option Expiration Dates

Currently, per Commentary .07(a), after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day ("Short Term Option Opening Date") series of options on that class that expire at the close of business on each of the next five Fridays that are business days and are not Fridays on which monthly options series or Quarterly Options Series expire (hereinafter referred to as "Short Term Option Expiration Dates").[5] In addition, the Exchange may have no more than a total of five Short Term Option Expiration Dates not including any Monday or Wednesday SPY, QQQ, and IWM Expirations. Further, if the Exchange is not open for business on the respective Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the

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[4] *See* Securities and Exchange Act Release No. 96281 (November 9, 2022), 87 FR 68769 (November 16, 2022) (SR–ISE–2022–18) ("ISE Approval Order").

[5] The Exchange notes that Rule 6.1–O(41) contains a definition for Short Term Options Series that is no longer applicable and is slated for deletion (together with the entire Rule 6.1–O) in a subsequent rule filing. *See* Securities Exchange Act Release No. 94072 (January 26, 2022), 87 FR 5592 (February 1, 2022) (Notice of filing Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 4) (SR–NYSEArca–2021–47) (proving, in relevant part, that the definition of "Short Term Options Series" was duplicative of Commentary .07 to Rule 6.4–O and therefore would be deleted in a subsequent filing). *Id.,* 87 FR at 5594 and 5653, n. 18.