SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101615; File No. SR–CboeBZX–2024–111]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Fees for Its New Offering of Market Data Reports

November 13, 2024.

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 November 1, 2024, Cboe BZX Exchange, Inc. (the ''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.

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 fees for its new offering of market data reports. 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 (*https://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 amend its fee schedule to adopt fees for Cboe Timestamping Service reports, effective November 1, 2024. The Exchange recently adopted a new data product known as the Cboe Timestamping Service.[3] The Cboe Timestamping Service provides timestamp information for orders and cancels for market participants. More specifically, the Cboe Timestamping Service reports provide various timestamps relating to the message lifecycle throughout the exchange system. The first report—the Missed Liquidity Report—covers order messages of the Member only and the second report—Cancels Report—covers cancel messages of the Member only. The reports are optional products that are available to all Members and Members may opt to choose both reports, one report, or neither report.

The Cancels Report provides response time details for orders that rest on the book where the Member attempted to cancel that resting order or any other resting order but was unable to do so as the resting order was executed before the system processed the cancel message. The Cancels Report assists the Member in determining by how much time that order missed being canceled instead of executing.

The Missed Liquidity Report provides time details for executions of orders that rest on the book where the Member attempted to execute against that resting order within an Exchange-determined amount of time (not to exceed 1 millisecond) after receipt of the first attempt to execute against the resting order and within an Exchange-determined amount of time (not to exceed 100 microseconds) before receipt of the first attempt to execute against the resting order.

Both the Missed Liquidity Report and Cancels Report include the following data elements for orders[4] and cancel messages,[5] respectively: (1) Member Firm ID; (2) Symbol; (3) Execution ID;[6] (3) Exchange System Timestamps for orders and cancels;[7] (4) Matching Unit number;[8] (5) Queued;[9] (6) Port Type;[10] and (7) Aggressor Order Type.[11] No specific information about resting orders on the Exchange book are provided.

These reports are in response to requests from Members for additional data concerning the timeliness of their incoming orders, cancel messages and executions against resting orders. The Exchange believes these reports will increase transparency by providing Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates and improve order cancel success.

The Exchange notes that the data included in the reports are based only on the data of the market participant that opts to subscribe to the reports (''Recipient Member'') and do not include information related to any Member other than the Recipient Member. Additionally, neither report includes real-time market data. Rather, the reports contain historical data from the prior trading day and are available after the end of the trading day, generally on a T+1 basis.

The Exchange now proposes to assess the following monthly fees for Members that wish to purchase the Cancels Report and/or the Missed Liquidity Report. The Exchange proposes a monthly flat fee of $1,000 for the Cancels Report for a subscribing Member. The Exchange also proposes a progressive monthly fee structure for the Missed Liquidity Report based on the

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100799 (August 27, 2024), 89 FR 68672 (August 21, 2024) (SR–CboeBZX–2024–077).

[4] The Missed Liquidity Report only includes trade events which are triggered by an order that removed liquidity on entry and will exclude trade events resulting from: elected stop orders, orders routed and executed at away venues, and peg order movements, and auctions.

[5] Includes individual order cancellations, mass cancels, and purge orders messages that are sent via Financial Information Exchange (''FIX'') protocol or Binary Order Entry (BOE) protocol by a subscriber.

[6] The Execution ID is a unique reference number assigned by the Exchange for each trade.

[7] Includes Network Discovery Time (which is a network hardware switch timestamp taken at the network capture point); Order Handler NIC Timestamp (which is a hardware timestamp that represents when a BOE order handler server NIC observed the message); Order Handler Received Timestamp (which is software timestamp that represents when the FIX or BOE order handler has begun processing the order after the socket read); Order Handler Send Timestamp (which represents when the FIX or BOE order handler has finished processing the order and begun sending to the matching engine); Matching Engine NIC Timestamp (which is a hardware timestamp that represents when the target matching engine server NIC observed the message); and Matching Engine Transaction Timestamp (which is a software timestamp that represents when the matching engine has started processing an event).

[8] Represents the matching unit number.

[9] Flag to indicate whether a message was delayed due to message in flight limits (*i.e.,* a limit on the total number of messages in flight between an order handler and a matching engine).

[10] Refers to the port type used by the session to send the applicable message.

[11] Indicates whether the order type of the response order that executed against the resting order was a new order or modify message.

Member's subscribing logical (FIX or BOE) order entry ports (the ''Ports'') [12] with the following tiers: $1,500 for 1–10 Ports, $2,000 for 11–20 Ports and $2,500 for 21 and more Ports.[13] For a mid-month subscription, the monthly fee(s) shall be prorated based on the initial date of the subscription.[14]

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.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] 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) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[18] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

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 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 reports are the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition: ''[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.'' [19]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. The Cboe Timestamping Service (*i.e.,* the Missed Liquidity and Cancels Reports) provides investors with new options for receiving market data, which was a primary goal of the market data amendments adopted by Regulation NMS.[20]

The reports are designed for Members that are interested in gaining insight into latency in connection with their respective (1) orders that failed to execute against an order resting on the Exchange order book and/or (2) cancel messages that failed to cancel resting orders. The Exchange believes that providing this optional data to interested Members for a fee is consistent with facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest because it provides Members with an opportunity to receive additional information and insight into their trading activity on the Exchange.

The Exchange believes the fee proposals for both the Missed Liquidity Report and Cancels Report are reasonable as the Exchange is offering any Member access to subscribe to one or both report(s) in the Member's sole discretion based on their unique business needs. The reports are optional for Members to subscribe to if they believe it to be helpful and are not required for Members to purchase in order to access the Exchange. Additionally, Members may cancel their usage of this report at any time.

The Exchange believes that the fee structure for the Missing Liquidity Report reflects an equitable allocation and will not be unfairly discriminatory as it is a voluntary product designed to ensure that the amount of the charge is tailored to the specific port usage patterns of the Recipient Member. The range of fee options further ensures that Recipient Members are not charged a fee that is inequitably disproportionate to the use that they make of the product. Additionally, Recipient Members aren't required to pay the set threshold for all Ports it has in a given month, instead, Members are able to select which Ports (if any) they would like to subscribe to the Missing Liquidity Report for a given month in order to study its orders in the market to be better informed market participants. Members are under no obligation to subscribe to the Missing Liquidity Report if it does not desire to do so.

The fee structure for the Missing Liquidity Report closely aligns to the fee structure of the previously offered Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering.[21] However, the NASDAQ Missed Opportunity—Latency report included an additional tier with a higher price than the Exchange's proposed fee structure.[22] The NASDAQ structure included an additional tier level that imposes a monthly fee of $3,500 for subscribers that have over 25 ports [23] while the Exchange fee structure

[12] Based on a Members' unique needs, Members may choose which Ports (if any) it would like to subscribe to the Missed Liquidity Report. For example, a Member that has 20 Ports, but is only interested in receiving data on 10 of their Ports would then be charged the $1,500 tier fee for its subscribing Ports.

[13] The Exchange proposes to make clear in the Fees Schedule that the proposed fees are not progressive (*i.e.,* if a Member requests the Missed Liquidity Report for 20 Ports, it will be assessed $2,000 per month).

[14] Fees will be assessed on a look-back basis based on the maximum number of subscribing Ports a Member had in the prior calendar month. For example, if a Member had 10 Ports that were subscribed to the Missed Liquidity Report from September 1st–September 26th and the Member added an additional Port to the Missed Liquidity Report on September 27th (for a total of 11 subscribing Ports), the Member would then be assessed a fee of $2,000 for the month of September for the Missed Liquidity Report. Additionally, the Exchange proposes to make clear in its fee schedule that new subscribers will be charged a prorated fee for a mid-month subscription based on the initial date of the subscription.

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

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] 15 U.S.C 78f(b)(4).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''Regulation NMS Adopting Release'').

[20] *See* Regulation NMS Adopting Release, supra, at 37503.

[21] *See* Securities Exchange Act Release No. 78886 (September 20, 2016), 81 FR 66113 (September 26, 2016) (SR–NASDAQ–2016–101) (Order Granting Approval of Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Add NASDAQ Rule 7046 (Nasdaq Trading Insights).

[22] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

[23] *Id.*

would provide its similar report for a fee of $2,500 for a Recipient Member that has 25 ports.

The Exchange believes its proposed fee for the Cancels Report is reasonable as it's a modest, flat fee of $1,000/month. As the Exchange offers mass cancels through Purge Ports in addition to standard cancels through the Ports, and since cancels may occur through a variety of port types as opposed to just the Ports, the Exchange found a modest, flat fee to be more appropriate for the Cancels Report.

The proposed fees are also reasonable as they are lower than the fees assessed for similar reports offered by other exchanges. For example, the MIAX Emerald Liquidity Taker Event Report is substantially similar to the Missed Liquidity Report and Cancels Report [24] and has a monthly fee of $4,000 or an annual fee of $24,000.[25] A Member is able to receive both the Cancels Report and the Missed Liquidity Report for a monthly fee no greater than $3,500 a month- making the Cboe Timestamping Reports less than the MIAX Emerald report. With the Exchange's approach of (i) bifurcating the orders and cancels to two separate and distinct offerings (Missing Liquidity Report and Cancels Report) and (ii) allowing Members to select its subscribing Ports for the Missed Liquidity Report, it allows Members to further curb costs if they choose to subscribe to one or both of these reports. As such, the Exchange believes that the proposed fees for the both the Missed Liquidity Report and Cancels Report are fair and reasonable as they are set at a level either similar to or lower than other exchanges that offer similar reports.

The proposal would also not permit unfair discrimination as both the Cancels Report and Missed Liquidity Report will be available to all Members, who may opt to subscribe to one, both, or neither, and will help to protect a free and open market by continuing to provide additional non-core data (offered on an optional basis for a fee) to the marketplace and by providing investors with greater choices.[26] As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange's potential report as more attractive, then such market participant can merely choose not to purchase the Exchange's reports and instead purchase another exchange's similar data product(s), which may offer similar data points, albeit based on that other market's trading activity.

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 believes the reports will contribute to robust competition among national securities exchanges. The Missed Liquidity Report and Late Cancels Report further enhances competition between exchanges by allowing the Exchange to expand its product offerings to include reports similar to reports that are currently offered by other exchanges.[27]

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable reports with lower prices to better compete with the Exchange's offerings. The Exchange operates in a highly competitive environment, and its ability to price the reports is constrained by competition among exchanges who choose to adopt similar products. The Exchange must consider this in its pricing discipline in order to compete for subscribers of the Exchange's market data via the reports. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's reports, which as discussed, Members are under no obligation to utilize. 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.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed fees apply uniformly to any purchaser in that the Exchange does not differentiate between the different Members that may purchase the reports. While the Exchange does propose to implement tiered pricing for its Missed Liquidity Report (similar to the pricing used for NASDAQ Trader Insight offering),[28] the tiered pricing shall apply to all Members that wish to purchase the Missed Liquidity Report and this proposed pricing structure is reflective of the specific port usage patterns of the Recipient Member. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

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) of the Act [29] and paragraph (f) of Rule 19b–4 [30] 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,

[24] *See e.g., MIAX Emerald Rule 531. See also* Securities Exchange Act Release No. 91356 (March 18, 2021), 86 FR 15759 (March 24, 2021) (SR–EMERALD–2021–09). Although not clearly defined, the Exchange believes that MIAX Emerald's Liquidity Taker Event Report also provides information relating to cancel messages. Particularly, MIAX Emerald Liquidity Taker Event Report provides, among other things, data relating to the ''type of each response submitted by the Recipient Member.'' *See* MIAX Emerald Rule 5.31(a)(iii)(C). MIAX Emerald's technical specifications outline the various types of available liquidity messages including, Simple Mass Quote Cancel Request and Mass Liquidity Cancel Request See MIAX Express Interface for Quoting and Trading Options, MEI Interface Specification, Section 4.1 (Liquidity Messages), available at: MIAX_Express_Interface_MEI_v2.2a.pdf (*miaxglobal.com*).

[25] *See* MIAX Emerald Fee Schedule, Section 7, Reports.

[26] *See* Sec. Indus. Fin. Mkts. Ass'n (SIFMA), Initial Decision Release No. 1015, 2016 SEC LEXIS 2278 (ALJ June 1, 2016) (finding the existence of vigorous competition with respect to non-core market data). *See also* the decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''NetCoalition I'') (upholding the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data).

[27] *See e.g.,* MIAX Emerald Rule 531.

[28] *See* Securities Exchange Act Release No. 79035 (October 11, 2016), 81 FR 70207 (October 4, 2016) (SR–NASDAQ–2016–124).

[29] 15 U.S.C. 78s(b)(3)(A).

[30] 17 CFR 240.19b–4(f).

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–2024–111 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–2024–111. 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–2024–111 and should be submitted on or before December 10, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101617; File No. SR–NASDAQ–2024–062]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 9, Section 13, Position Limits, and Options 9, Section 15, Exercise Limits, Regarding Options on the iShares Bitcoin Trust ETF

November 13, 2024.

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 November 4, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''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

The Exchange proposes to amend The Nasdaq Options Market LLC (''NOM'') Options 9, Section 13, Position Limits, and Section 15, Exercise Limits.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* 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 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.

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

[2] 17 CFR 240.19b–4.

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 Options 9, Section 13, Position Limits, and Options 9, Section 15, Exercise Limits, to limit the position and exercise limits for options on iShares Bitcoin Trust ETF (''IBIT'') to 25,000 contracts.[3]

Recently, Nasdaq ISE, LLC (''ISE'') received approval to list options on IBIT.[4] NOM's Options 4 Rules were amended as those Rules are incorporated by reference to ISE's Options 4 Rules, so NOM has the ability to list IBIT options. ISE's IBIT Approval Order[5] stated that the position and exercise limits for IBIT options shall be 25,000 contracts. At this time, the Exchange proposes to amend NOM Option 9, Sections 13 and 15 to similarly note that IBIT options position and exercise limits shall be 25,000 contracts to mirror ISE's position and exercise limits for IBIT options.

Additionally, the Exchange proposes to amend a grammatical error in Options 3, Section 15(a)(1) to change ''exceed'' to ''exceeded''.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed 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, in general to protect investors and the public interest.

The Exchange's proposal to amend Options 9, Section 13, Position Limits, and Options 9, Section 15, Exercise Limits, to provide that the position and exercise limits for IBIT options shall be 25,000 contracts is consistent with the Act as it will conform NOM's IBIT options position and exercise limits with ISE's IBIT options position and exercise limits in order that IBIT options

[3] In the absence of this proposal, position and exercise limits would be governed by NOM Options 9, Section 13(a).

[4] *See* Securities Exchange Act Release No. 101128 (September 20, 2024), 89 FR 78942 (September 26, 2024) (SR–ISE–2024–03) (Notice of Filing of Amendment Nos. 4 and 5 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 4, and 5, To Permit the Listing and Trading of Options on the iShares Bitcoin Trust) (''IBIT Approval Order'').

[5] *See* IBIT Approval Order.

[6] 15 U.S.C. 78f(b)

[7] 15 U.S.C. 78f(b)(5).