

OMB APPROVAL

OMB Number: 3235-0045
 Estimated average burden
 hours per response.....38

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 42

SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No.* SR - 2019 - * 087

Amendment No. (req. for Amendments *)

Filing by Cboe BZX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *



Amendment *



Withdrawal



Section 19(b)(2) *



Section 19(b)(3)(A) *



Section 19(b)(3)(B) *



Rule

Pilot



Extension of Time Period
for Commission Action *



Date Expires *

☐ 19b-4(f)(1)

☐ 19b-4(f)(4)

☒ 19b-4(f)(2)

☐ 19b-4(f)(5)

☐ 19b-4(f)(3)

☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Section 806(e)(1) *



Section 806(e)(2) *



Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 3C(b)(2) *



Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

The Exchange proposes to amend the fee schedule to institute a Derived Data API Service.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Adrian

Last Name * Griffiths

Title * Assistant General Counsel

E-mail * agriffiths@cboe.com

Telephone * (646) 856-8723

Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 10/01/2019

By Adrian Griffiths

(Name *)

Assistant General Counsel

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

agriffiths@cboe.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information *

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

Add Remove View

The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule to institute a Derived Data API Service.

The text of the proposed rule change is attached as Exhibit 5 and is available on the Exchange’s website at <http://markets.cboe.com/>, at the Exchange’s principal office and at the Public Reference Room of the Commission.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Exchange’s President (or designee) pursuant to delegated authority approved the proposed rule change on August 1, 2019.

(b) Please refer questions and comments on the proposed rule change to Patrick Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-7462, or Adrian Griffiths, Assistant General Counsel, (646) 856-8723.

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

(a) Purpose

The purpose of the proposed rule change is to implement a pricing structure that would reduce fees charged to Distributors that distribute Derived Data through an

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Application Programming Interface (“API”) – i.e., the Derived Data API Service (the “Program”). The Exchange initially filed to introduce the Program on August 1, 2019 (“Initial Proposal”) based on customer demand, and in order to be able to decrease the cost of Derived Data to Distributors that wish to distribute Derived Data through an API Service.³ The Initial Proposal was published in the Federal Register on August 20, 2019,⁴ and the Commission received no commenter letters on the proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a suspension order (the “Suspension Order”).⁵ The Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.⁶

The Exchange continues to believe that it is in the best interest of its customers and investors to permit the distribution of Derived Data through an API Service at a lower cost, and is therefore filing again to reduce the fees charged to Distributors that offer an API Service. By reducing its pricing, the Exchange hopes to be able to better compete with top of book market data products offered by other national securities exchanges and the securities information processors (“SIPs”). For the reasons expressed

³ An “API Service” is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

⁴ See Securities Exchange Act Release No. 86671 (August 14, 2019), 84 FR 43237 (August 20, 2019) (SR-CboeBZX-2019-070).

⁵ See Securities Exchange Act Release No. 87125 (September 26, 2019) (SR-CboeBZX-2019-070) (federal register publication pending).

⁶ Id.

both in this filing and the Initial Proposal, the Exchange believes that the Program is pro-competitive, and otherwise consistent with the Exchange Act. In sum, the Exchange remains committed to competing for business by offering both high quality and cost effective data. Continued operation of the Program would ultimately support that goal, and indeed would foster additional competition in the market for U.S. equity market data.

Derived Data

“Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. The Exchange currently offers a Derived Data White Label Service Program that allows Distributors to benefit from discounted fees when distributing Derived Data taken from BZX Top, which is a proprietary data product that provides top of book quotations and execution information for all equity securities traded on the Exchange.⁷ The current program is limited to the distribution of Derived Data to subscribers within a White Label Service which is a type of hosted display solution in which a Distributor hosts, maintains, and controls a website or platform on behalf of a third-party entity.

When the Exchange filed to introduce the White Label Service Program, a number of Distributors contacted the Exchange to inquire about offering a similar program for API Services due to demand for such products from their end clients. The Derived Data API Service would supplement the current Derived Data White Label Service Program by offering discounted fees for Distributors that make Derived Data

⁷ See Rule 13.8(c).

available through an API, thereby allowing Distributors to benefit from reduced fees when distributing Derived Data to subscribers that establish their own platforms rather than relying on a hosted display solution. In turn, the Exchange believes that the Program would allow Distributors to reach a broader customer base that includes end clients that desire more flexibility and control over how Derived Data is used, furthering both the distribution and cost effectiveness of Exchange market data, and allowing the Exchange to compete for business that may otherwise go to its competitors.

Although White Label Service Platforms are valuable to certain end clients that may not have the technology or resources to build their own applications to display Derived Data, such products offer only an “off-the-shelf” solution, as the platform is ultimately designed and controlled by the Distributor. Thus, subsequent to the introduction of the White Label Service Program, Distributors have encouraged the Exchange to offer a Program for API Services that would provide greater flexibility and control to end clients who have already developed applications and tools for servicing their customers. Unlike the White Label Service, where the Distributor is responsible for developing an “off-the-shelf” technology platform that is standard and not designed specifically for a particular client, the API Service allows Distributors to use Exchange market data to create financial instruments, such as contracts for difference, that are then offered via API to end clients that can use that information in one or more of their own customized applications based on their specific business needs and the needs of their downstream users. The API Service would therefore offer significant advantages over the White Label Service Program, and would provide another alternative pricing option that

Distributors can choose to utilize (or not) in their efforts to obtain high quality and cost effective access to top of book U.S. equities data to create Derived Data.

With the implementation of the API Service Program, the Exchange would continue to offer the current White Label Service Platform, thereby ensuring that Distributors that prefer the design or cost structure of that offering can continue to reap the benefits of that program. Offering additional programs for Derived Data based on customer demand and the ways in which Derived Data is currently being utilized enhances customer choice, and provides alternatives to the market that would otherwise not be available to Distributors and their end clients.

Current Fee Structure

The Exchange currently charges a fee of \$2,500 per month for external distribution of BZX Top. In addition, external distributors of BZX Top are charged a fee of \$4 per month for each Professional User and \$0.10 per month for each Non-Professional User. The Exchange also offers special pricing for Derived Data provided through a White Label Service, as mentioned above. This service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor.⁸ The White Label Service Program can be used for a number of different purposes, including the display of information or data, or the creation of derivative instruments, primarily contracts for difference,⁹ but is

⁸ The Distributor maintains control of the application's data, entitlements and display.

⁹ A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

unavailable to Distributors that make such information available through an API. Such Distributors are not eligible for discounted Derived Data pricing today, and are instead liable for the fees normally applicable for the distribution of BZX Top, as listed at the beginning of this paragraph.

Discounted Fees for Derived Data API Service

As proposed, a Distributor that provides a Derived Data API Service for Derived Data taken from BZX Top would be liable for the following fees instead of the fees normally applicable for the distribution of BZX Top. Instead of the regular fee for external distribution, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (i.e., “External Subscribers”) that receive Derived Data from the Distributor through a Derived Data API Service.

As proposed, Distributors would continue to be charged a fee of \$2,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers. Distributors that make Derived Data available to additional External Subscribers would benefit from discounted pricing based on the number of External Subscribers. Specifically, the external distribution fee would be lowered by 20% to \$2,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers, and further lowered another 20% to \$1,500 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers.

As is the case under the Derived Data White Label Service, the External Subscriber Fee would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. For example, a Distributor

providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (i.e., 6 External Subscribers x \$2,000 each). The Derived Data API Service, however, would allow end clients to, at their discretion, choose to use Derived Data in one or more customized applications (e.g., mobile application, website, terminal) without incurring additional External Subscriber fees. That is, the fees would be charged per API Service, and not based in any way on the number of applications used by the end client to serve their downstream users. By contrast, under the White Label Service, end clients are generally limited to a single platform managed by the Distributor, rather than uncontrolled access to an API, and would be subject to the full External Subscriber fee for access to that single platform without the ability to offer additional platforms for the same fee.

The Exchange would continue to charge a monthly Professional User fee of \$4 per month for each Professional User that accesses Derived Data through an API Service. The current Non-Professional User fee of \$0.10 per month would be eliminated when participating in the Derived Data API Service, further reducing costs for Distributors that provide access to such data to downstream investors.

Financial Product Distribution Program

With the proposed introduction of the Derived Data API Service, the Exchange would bring together the Derived Data White Label Service and Derived Data API Service under the common heading “Financial Product Distribution Program.” The Financial Product Distribution Program would encompass both of these products.

Similar to the Derived Data White Label Service, the Derived Data API Service would be entirely optional, in that it applies only to Distributors that opt to use Derived

Data from BZX Top to create an API Service, as described herein. It does not impact or raise the cost of any other Exchange product, nor does it affect the cost of BZX Top, except in instances where Derived Data is made available on an API Service. A Distributor that provides a White Label Service or API Service for Derived Data taken from BZX Top would be liable for the fees associated with the White Label Service or API Service instead of the fees normally applicable for the distribution of BZX Top. A Distributor that provides a White Label Service or API Service for BZX Top data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service or API Service would be liable for the fees normally applicable for the distribution of BZX Top.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the SIPs to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.

In an effort to widen distribution to market participants that use equities market data to compute pricing for certain derivatives instruments, national securities exchanges including the Exchange, its affiliate, Cboe EDGX Exchange Inc., and The Nasdaq Stock

Market LLC (“Nasdaq”) offer discounted pricing for Derived Data that is created using their top of book products. The Program would therefore compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data. Derived Data is largely used to create derivative instruments, such as contracts for difference, rather than to trade equity securities, and is often purchased by market data customers outside of the U.S. where such derivative instruments are more commonly offered. As a result, customers that purchase top of book data to create Derived Data do not need a consolidated quotation, and typically only purchase top of book data to create Derived Data from one source. Customers therefore choose where to obtain top of book data to create Derived Data based on two factors: (1) data quality, *i.e.*, how much the quoted prices reflect the overall market for particular securities, and (2) the cost of obtaining that data. The Program would allow the Exchange to better compete on the second of these factors by reducing the cost of market data charged to Distributors that offer an API Service.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option to Distributors that wish to provide Derived Data through an API Service rather than a White Label Service due to the advantages of this form of distribution, including more flexibility and control for end clients. Although that filing was suspended by the Commission, the Exchange believes that its experience in offering the Program while it was in effect reflect the competitive nature of the market for the creation and distribution of Derived Data. Specifically, after the Exchange initially reduced the fees charged for API Services under the Initial Proposal, it successfully onboarded one new customer that switched from a competitor

product offered by Nasdaq due to the attractive pricing.¹⁰ The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in offering API Services. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead continue purchasing such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings. Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

¹⁰ See Cboe Innovation Spotlight, “Invast Global – An alternative prime broker,” available at https://markets.cboe.com/us/equities/market_data_products/spotlight.

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹³ Specifically, the proposed rule change 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 addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁴ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted 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 change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in

¹³ 15 U.S.C. 78k-1.

¹⁴ See 17 CFR 242.603.

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.”¹⁵ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for one of its proprietary top of book data offerings through the introduction of a Derived Data API Service.

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on API Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. The fees that are the subject of this rule filing are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete more effectively for market data distributors that purchase market information to offer Derived Data to investors. The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. Expanding the availability of diverse competitive products actually promotes *additional* competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that introduction of pricing programs

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

such as the Derived Data API Service are not only constrained by competition but also ensure continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges and the SIPs.

Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. As a result, Distributors of Derived Data do not need a consolidated view of the market across multiple exchanges, and generally purchase such data from a single exchange. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to BZX Top market data instead of competitor products.

Indeed, the Exchange has already successfully onboarded one new Distributor that has decided to purchase top of book data from the Exchange to create Derived Data rather than purchasing top of book data from a competitor exchange, and is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges, including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an alternate fee structure for providing BZX Top market data to Distributors that make Derived Data available to External Subscribers via API Services. As proposed, if a Distributor uses an API Service to distribute Derived Data, the Distributor will be charged a fee that is tiered based on the number of External Subscribers that are provided access to that data instead of the higher fee normally charged for external distribution. The Exchange believes that this fee is equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of BZX Top.

The Exchange believes that it is equitable and not unfairly discriminatory to begin providing discounted rates to Distributors that provide access to at least six External Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Exchange. The Exchange understands that Distributors that may provide this sort of API Service typically serve a relatively larger number of External Subscribers, and would therefore be able to meet the proposed threshold by providing Derived Data taken from BZX Top to those customers. The one current subscriber that began participating in the Program after the Initial Proposal intends to provide Derived Data to significantly more than six External Subscribers.

The Exchange would also continue to charge a small fee for Professional Users but would eliminate Non-Professional User fees for data provided under the Program.

The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

Further, the proposed fees will only apply to Distributors that elect to participate in the Program by distributing Derived Data through an API Service. BZX Top market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Distributors of BZX Top are not required to participate in the proposed Program, which is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a White Label Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products. Although the proposed pricing for the Program differs from the pricing currently in place for the White Label Service Program, the Exchange believes that its pricing reflects the relative benefits provided to Distributors that offer an

API Service that allows end clients to offer one or more customized applications to their customers rather than simply offering a single “off-the-shelf” solution designed and controlled by the Distributors. Indeed, the Program was developed by the Exchange in response to demand for such a product for Distributors that believe that they would be better able to serve their end clients with an API Service. Distributors that prefer the design or cost structure of the White Label Service Program would continue to be able to subscribe to that offering. Based on customer feedback, however, the Exchange believes that the API Service Program would be valuable to a number of Distributors that have expressed interest specifically in that offering.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) competition among exchanges that offer similar data products, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the

Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an API. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting investors that are provided access to such data.

The proposed fees apply to data derived from BZX Top, which is subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and Nasdaq offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is proposing to expand the programs that it offers to include a Derived Data API Service, allowing additional market data customers to benefit from discounted pricing. The Exchange does not believe that the proposed price reduction for Derived Data offered through an API would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁶ and Rule 19b-4(f)(2) thereunder,¹⁷ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

¹⁶ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁷ 17 CFR 240.19b-4(f)(2).

EXHIBIT 1**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBZX-2019-087]

[Insert date]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fee Schedule to institute a Derived Data API Service

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 [insert date], 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. (“BZX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) a proposed rule change to amend the fee schedule to institute a Derived Data API Service. The text of the proposed rule change is attached as 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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to implement a pricing structure that would reduce fees charged to Distributors that distribute Derived Data through an Application Programming Interface ("API") – i.e., the Derived Data API Service (the "Program"). The Exchange initially filed to introduce the Program on August 1, 2019 ("Initial Proposal") based on customer demand, and in order to be able to decrease the cost of Derived Data to Distributors that wish to distribute Derived Data through an API Service.³ The Initial Proposal was published in the Federal Register on August 20, 2019,⁴ and the Commission received no commenter letters on the proposal. The Program remained in effect until the fee change was temporarily suspended pursuant to a

³ An "API Service" is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.

⁴ See Securities Exchange Act Release No. 86671 (August 14, 2019), 84 FR 43237 (August 20, 2019) (SR-CboeBZX-2019-070).

suspension order (the “Suspension Order”).⁵ The Suspension Order also instituted proceedings to determine whether to approve or disapprove the Initial Proposal.⁶

The Exchange continues to believe that it is in the best interest of its customers and investors to permit the distribution of Derived Data through an API Service at a lower cost, and is therefore filing again to reduce the fees charged to Distributors that offer an API Service. By reducing its pricing, the Exchange hopes to be able to better compete with top of book market data products offered by other national securities exchanges and the securities information processors (“SIPs”). For the reasons expressed both in this filing and the Initial Proposal, the Exchange believes that the Program is pro-competitive, and otherwise consistent with the Exchange Act. In sum, the Exchange remains committed to competing for business by offering both high quality and cost effective data. Continued operation of the Program would ultimately support that goal, and indeed would foster additional competition in the market for U.S. equity market data.

Derived Data

“Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data. The Exchange currently offers a Derived Data White Label Service Program that allows Distributors to benefit from discounted fees when distributing Derived Data taken from BZX Top, which is a proprietary data product that provides top of book quotations and execution information

⁵ See Securities Exchange Act Release No. 87125 (September 26, 2019) (SR-CboeBZX-2019-070) (federal register publication pending).

⁶ Id.

for all equity securities traded on the Exchange.⁷ The current program is limited to the distribution of Derived Data to subscribers within a White Label Service which is a type of hosted display solution in which a Distributor hosts, maintains, and controls a website or platform on behalf of a third-party entity.

When the Exchange filed to introduce the White Label Service Program, a number of Distributors contacted the Exchange to inquire about offering a similar program for API Services due to demand for such products from their end clients. The Derived Data API Service would supplement the current Derived Data White Label Service Program by offering discounted fees for Distributors that make Derived Data available through an API, thereby allowing Distributors to benefit from reduced fees when distributing Derived Data to subscribers that establish their own platforms rather than relying on a hosted display solution. In turn, the Exchange believes that the Program would allow Distributors to reach a broader customer base that includes end clients that desire more flexibility and control over how Derived Data is used, furthering both the distribution and cost effectiveness of Exchange market data, and allowing the Exchange to compete for business that may otherwise go to its competitors.

Although White Label Service Platforms are valuable to certain end clients that may not have the technology or resources to build their own applications to display Derived Data, such products offer only an “off-the-shelf” solution, as the platform is ultimately designed and controlled by the Distributor. Thus, subsequent to the introduction of the White Label Service Program, Distributors have encouraged the Exchange to offer a Program for API Services that would provide greater flexibility and

⁷ See Rule 13.8(c).

control to end clients who have already developed applications and tools for servicing their customers. Unlike the White Label Service, where the Distributor is responsible for developing an “off-the-shelf” technology platform that is standard and not designed specifically for a particular client, the API Service allows Distributors to use Exchange market data to create financial instruments, such as contracts for difference, that are then offered via API to end clients that can use that information in one or more of their own customized applications based on their specific business needs and the needs of their downstream users. The API Service would therefore offer significant advantages over the White Label Service Program, and would provide another alternative pricing option that Distributors can choose to utilize (or not) in their efforts to obtain high quality and cost effective access to top of book U.S. equities data to create Derived Data.

With the implementation of the API Service Program, the Exchange would continue to offer the current White Label Service Platform, thereby ensuring that Distributors that prefer the design or cost structure of that offering can continue to reap the benefits of that program. Offering additional programs for Derived Data based on customer demand and the ways in which Derived Data is currently being utilized enhances customer choice, and provides alternatives to the market that would otherwise not be available to Distributors and their end clients.

Current Fee Structure

The Exchange currently charges a fee of \$2,500 per month for external distribution of BZX Top. In addition, external distributors of BZX Top are charged a fee of \$4 per month for each Professional User and \$0.10 per month for each Non-Professional User. The Exchange also offers special pricing for Derived Data provided

through a White Label Service, as mentioned above. This service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor.⁸ The White Label Service Program can be used for a number of different purposes, including the display of information or data, or the creation of derivative instruments, primarily contracts for difference,⁹ but is unavailable to Distributors that make such information available through an API. Such Distributors are not eligible for discounted Derived Data pricing today, and are instead liable for the fees normally applicable for the distribution of BZX Top, as listed at the beginning of this paragraph.

Discounted Fees for Derived Data API Service

As proposed, a Distributor that provides a Derived Data API Service for Derived Data taken from BZX Top would be liable for the following fees instead of the fees normally applicable for the distribution of BZX Top. Instead of the regular fee for external distribution, Distributors would be charged a tiered External Subscriber Fee based on the number of API Service Platforms (i.e., “External Subscribers”) that receive Derived Data from the Distributor through a Derived Data API Service.

As proposed, Distributors would continue to be charged a fee of \$2,500 per month for each External Subscriber if the Distributor makes Derived Data available to 1 – 5 External Subscribers. Distributors that make Derived Data available to additional External Subscribers would benefit from discounted pricing based on the number of

⁸ The Distributor maintains control of the application’s data, entitlements and display.

⁹ A contract for difference is an agreement to exchange the difference between the current value of an asset and its future value. If the price increases, the seller pays the buyer the amount of the increase. If the price decreases, the buyer pays the seller the amount of the decrease.

External Subscribers. Specifically, the external distribution fee would be lowered by 20% to \$2,000 per month for each External Subscriber if the Distributor makes Derived Data available to 6 – 20 External Subscribers, and further lowered another 20% to \$1,500 per month for each External Subscriber if the Distributor makes Derived Data available to 21 or more External Subscribers.

As is the case under the Derived Data White Label Service, the External Subscriber Fee would be non-progressive and based on the number of External Subscribers that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (i.e., 6 External Subscribers x \$2,000 each). The Derived Data API Service, however, would allow end clients to, at their discretion, choose to use Derived Data in one or more customized applications (e.g., mobile application, website, terminal) without incurring additional External Subscriber fees. That is, the fees would be charged per API Service, and not based in any way on the number of applications used by the end client to serve their downstream users. By contrast, under the White Label Service, end clients are generally limited to a single platform managed by the Distributor, rather than uncontrolled access to an API, and would be subject to the full External Subscriber fee for access to that single platform without the ability to offer additional platforms for the same fee.

The Exchange would continue to charge a monthly Professional User fee of \$4 per month for each Professional User that accesses Derived Data through an API Service. The current Non-Professional User fee of \$0.10 per month would be eliminated when

participating in the Derived Data API Service, further reducing costs for Distributors that provide access to such data to downstream investors.

Financial Product Distribution Program

With the proposed introduction of the Derived Data API Service, the Exchange would bring together the Derived Data White Label Service and Derived Data API Service under the common heading “Financial Product Distribution Program.” The Financial Product Distribution Program would encompass both of these products.

Similar to the Derived Data White Label Service, the Derived Data API Service would be entirely optional, in that it applies only to Distributors that opt to use Derived Data from BZX Top to create an API Service, as described herein. It does not impact or raise the cost of any other Exchange product, nor does it affect the cost of BZX Top, except in instances where Derived Data is made available on an API Service. A Distributor that provides a White Label Service or API Service for Derived Data taken from BZX Top would be liable for the fees associated with the White Label Service or API Service instead of the fees normally applicable for the distribution of BZX Top. A Distributor that provides a White Label Service or API Service for BZX Top data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service or API Service would be liable for the fees normally applicable for the distribution of BZX Top.

Market Background

The market for top of book data is highly competitive as national securities exchanges compete both with each other and with the SIPs to provide efficient, reliable, and low cost data to a wide range of investors and market participants. In fact, Regulation

NMS requires all U.S. equities exchanges to provide their best bids and offers, and executed transactions, to the two registered SIPs for dissemination to the public. Top of book data is therefore widely available to investors today at a relatively modest cost. National securities exchanges may also disseminate their own top of book data, but no rule or regulation of the Commission requires market participants to purchase top of book data from an exchange.

In an effort to widen distribution to market participants that use equities market data to compute pricing for certain derivatives instruments, national securities exchanges including the Exchange, its affiliate, Cboe EDGX Exchange Inc., and The Nasdaq Stock Market LLC (“Nasdaq”) offer discounted pricing for Derived Data that is created using their top of book products. The Program would therefore compete with similar products offered by other national securities exchanges that offer discounted fees to market participants that purchase Derived Data. Derived Data is largely used to create derivative instruments, such as contracts for difference, rather than to trade equity securities, and is often purchased by market data customers outside of the U.S. where such derivative instruments are more commonly offered. As a result, customers that purchase top of book data to create Derived Data do not need a consolidated quotation, and typically only purchase top of book data to create Derived Data from one source. Customers therefore choose where to obtain top of book data to create Derived Data based on two factors: (1) data quality, *i.e.*, how much the quoted prices reflect the overall market for particular securities, and (2) the cost of obtaining that data. The Program would allow the Exchange to better compete on the second of these factors by reducing the cost of market data charged to Distributors that offer an API Service.

As explained, the Exchange filed the Initial Proposal to introduce the Program in August in order to provide an attractive pricing option to Distributors that wish to provide Derived Data through an API Service rather than a White Label Service due to the advantages of this form of distribution, including more flexibility and control for end clients. Although that filing was suspended by the Commission, the Exchange believes that its experience in offering the Program while it was in effect reflect the competitive nature of the market for the creation and distribution of Derived Data. Specifically, after the Exchange initially reduced the fees charged for API Services under the Initial Proposal, it successfully onboarded one new customer that switched from a competitor product offered by Nasdaq due to the attractive pricing.¹⁰ The Exchange has also been discussing the Program with a handful of additional prospective clients that are interested in offering API Services. Without the proposed pricing discounts, the Exchange believes that those customers and prospective customers may not be interested in purchasing top of book data from the Exchange, and would instead continue purchasing such data from other national securities exchanges or the SIPs, potentially at a higher cost than would be available pursuant to the Program. The Program has therefore already been successful in increasing competition for such market data, and continued operation of the Program would serve to both reduce fees for such customers and to provide alternatives to data and pricing offered by competitors. Ultimately, the Exchange believes that it is critical that it be allowed to compete by offering attractive pricing to customers as increasing the availability of such products ensures continued competition with alternative offerings.

¹⁰ See Cboe Innovation Spotlight, “Invast Global – An alternative prime broker,” available at https://markets.cboe.com/us/equities/market_data_products/spotlight.

Such competition may be constrained when competitors are impeded from offering alternative and cost effective solutions to customers.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(4),¹² in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data.

The Exchange also believes that the proposed rule change is consistent with Section 11(A) of the Act.¹³ Specifically, the proposed rule change 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 addition, the proposed rule change is consistent with Rule 603 of Regulation NMS,¹⁴ which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

In adopting Regulation NMS, the Commission granted 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,

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4).

¹³ 15 U.S.C. 78k-1.

¹⁴ See 17 CFR 242.603.

and also spur innovation and competition for the provision of market data. The Exchange believes that the proposed fee change would further broaden the availability of U.S. equity market data to investors, consistent with the principles of Regulation NMS.

The Exchange operates in a highly competitive environment. Indeed, there are thirteen registered national securities exchanges that trade U.S. equities and offer associated top of book market data products to their customers. The national securities exchanges also compete with the SIPs for market data customers. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, 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.”¹⁵ The proposed fee change is a result of the competitive environment, as the Exchange seeks to amend its fees to attract additional subscribers for one of its proprietary top of book data offerings through the introduction of a Derived Data API Service.

The Exchange believes that it is reasonable to introduce reduced fees for the use of Derived Data on API Services as the proposed fee reduction would facilitate cost effective access to market information that is used primarily to create certain derivative instruments rather than to trade U.S. equity securities. The fees that are the subject of this rule filing are constrained by competition, and it is this competition that is driving the proposed fee change. Indeed, the Program is designed to allow the Exchange to compete

¹⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

more effectively for market data distributors that purchase market information to offer Derived Data to investors. The existence of alternatives to the Program ensures that the Exchange cannot set unreasonable or unfairly discriminatory fees, as subscribers are free to elect such alternatives. That is, the Exchange competes with other exchanges that provide similar market data products and pricing programs. Expanding the availability of diverse competitive products actually promotes *additional* competition as it ensures that alternative products from different sources are readily available to Distributors and the broader market. The Exchange therefore believes that introduction of pricing programs such as the Derived Data API Service are not only constrained by competition but also ensure continued competition that acts as a constraint on the pricing of services provided by other national securities exchanges and the SIPs.

Derived Data is primarily purchased for the creation of certain derivative instruments rather than for the trading of U.S. equity securities. As a result, Distributors of Derived Data do not need a consolidated view of the market across multiple exchanges, and generally purchase such data from a single exchange. If a competing exchange were to charge less for a similar product than the Exchange charges under the proposed fee structure, prospective subscribers may choose not to subscribe to, or cease subscribing to, the Program. The Exchange believes that lowering the cost of accessing Derived Data may make the Exchange's market information more attractive, and encourage additional Distributors to subscribe to BZX Top market data instead of competitor products.

Indeed, the Exchange has already successfully onboarded one new Distributor that has decided to purchase top of book data from the Exchange to create Derived Data

rather than purchasing top of book data from a competitor exchange, and is in discussions with a handful of other Distributors that are interested in procuring market data from the Exchange due to the attractive pricing offered pursuant to the Program. Distributors can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, firms have a wide variety of alternative market data products from which to choose, such as similar proprietary data products offered by other national securities exchanges, including those that choose to offer discounted fees for the distribution of Derived Data in an effort to compete for this business.

The proposed rule change would provide an alternate fee structure for providing BZX Top market data to Distributors that make Derived Data available to External Subscribers via API Services. As proposed, if a Distributor uses an API Service to distribute Derived Data, the Distributor will be charged a fee that is tiered based on the number of External Subscribers that are provided access to that data instead of the higher fee normally charged for external distribution. The Exchange believes that this fee is equitable and not unfairly discriminatory because the Exchange will apply the same fees to any similarly situated Distributors that elect to participate in the Program based on the number of External Subscribers provided access to Derived Data through an API Service, with Distributors providing access to six or more External Subscribers receiving a discount compared to the current pricing applicable for external distribution of BZX Top.

The Exchange believes that it is equitable and not unfairly discriminatory to begin providing discounted rates to Distributors that provide access to at least six External Subscribers as the discounted rates are designed to incentivize firms to grow the number of External Subscribers that purchase Derived Data from the Exchange. The Exchange

understands that Distributors that may provide this sort of API Service typically serve a relatively larger number of External Subscribers, and would therefore be able to meet the proposed threshold by providing Derived Data taken from BZX Top to those customers. The one current subscriber that began participating in the Program after the Initial Proposal intends to provide Derived Data to significantly more than six External Subscribers.

The Exchange would also continue to charge a small fee for Professional Users but would eliminate Non-Professional User fees for data provided under the Program. The Exchange believes that it is equitable and not unfairly discriminatory to charge a fee for Professional Users but no fee for Non-Professional Users. Non-Professional Users are already subject to a heavily discounted fee for BZX Top market data relative to Professional Users. Differential fees for Professional and Non-Professional Users are widely used by the Exchange and other exchanges for their proprietary market data as this reduces costs for retail investors and makes market data more broadly available. The Exchange believes that eliminating fees for Non-Professional Users that access Derived Data from Distributors pursuant to the Program is consistent with longstanding precedent indicating that it is consistent with the Act to provide reasonable incentives to retail investors that rely on the public markets for their investment needs.

Further, the proposed fees will only apply to Distributors that elect to participate in the Program by distributing Derived Data through an API Service. BZX Top market data is distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make this data available. Distributors of BZX Top are not required to participate in the proposed Program, which

is merely an alternative option being proposed by the Exchange to potentially lower costs for market data that is Derived Data. As previously explained, the Exchange currently offers discounted fees for Distributors that distribute Derived Data on a White Label Service. Expanding the universe of customers that can benefit from discounted fees for distributing Derived Data would serve to further increase the accessibility of the Exchange's market data products. Although the proposed pricing for the Program differs from the pricing currently in place for the White Label Service Program, the Exchange believes that its pricing reflects the relative benefits provided to Distributors that offer an API Service that allows end clients to offer one or more customized applications to their customers rather than simply offering a single "off-the-shelf" solution designed and controlled by the Distributors. Indeed, the Program was developed by the Exchange in response to demand for such a product for Distributors that believe that they would be better able to serve their end clients with an API Service. Distributors that prefer the design or cost structure of the White Label Service Program would continue to be able to subscribe to that offering. Based on customer feedback, however, the Exchange believes that the API Service Program would be valuable to a number of Distributors that have expressed interest specifically in that offering.

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

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by: (i) competition among exchanges that offer similar data products, and pricing options, to their customers; and (ii) the existence of inexpensive real-time consolidated data disseminated by the SIPs. Top of book data is

disseminated by both the SIPs and the thirteen equities exchanges. There are therefore a number of alternative products available to market participants and investors. In this competitive environment potential subscribers are free to choose which competing product to purchase to satisfy their need for market information. Often, the choice comes down to price, as broker-dealers or vendors look to purchase the cheapest top of book data product, or quality, as market participants seek to purchase data that represents significant market liquidity. In order to better compete for this segment of the market, the Exchange is proposing to reduce fees charged to Distributors that distribute Derived Data through an API. The Exchange believes that this would facilitate greater access to such data, ultimately benefiting investors that are provided access to such data.

The proposed fees apply to data derived from BZX Top, which is subject to competition from both the SIPs and exchanges that offer similar products, including but not limited to those that choose to provide similar pricing options for Derived Data. A number of national securities exchanges, including the Exchange, its affiliated Cboe U.S. equities exchanges, and Nasdaq offer pricing discounts for Derived Data today. These pricing programs reduce the cost of accessing top of book market information that is used, among other things, to create derivative instruments rather than to trade U.S. equity securities. In order to better compete for this segment of the market, the Exchange is proposing to expand the programs that it offers to include a Derived Data API Service, allowing additional market data customers to benefit from discounted pricing. The Exchange does not believe that the proposed price reduction for Derived Data offered through an API would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges and data vendors are free to lower their prices to better

compete with the Exchange's offering. The Exchange believes that the proposed rule change is pro-competitive as it seeks to offer pricing incentives to customers to better position the Exchange as it competes to attract additional market data subscribers.

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

No written comments were either solicited or received.

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 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 (<http://www.sec.gov/rules/sro.shtml>); or

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2019-087 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-2019-087. This file number should be included on the subject line if e-mail 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, D.C. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2019-087 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Proposed new language is underlined; proposed deletions are marked by [brackets].

Cboe BZX U.S. Equities Exchange Fee Schedule

* * * * *

Market Data Fees:**Definitions**

* * * * *

- An “API Service” is a type of data feed distribution in which a Distributor delivers an API or similar distribution mechanism to a third-party entity for use within one or more platforms. The service allows Distributors to provide Derived Data to a third-party entity for use within one or more downstream platforms that are operated and maintained by the third-party entity. The Distributor maintains control of the entitlements, but does not maintain technical control of the usage or the display.
- A “White Label Service” is a type of hosted display solution in which a Distributor hosts or maintains a website or platform on behalf of a third-party entity. The service allows Distributors to make Derived Data available on a platform that is branded with a third-party brand, or co-branded with a third party and a Distributor. The Distributor maintains control of the application's data, entitlements and display.
- “Derived Data” is pricing data or other data that (i) is created in whole or in part from Exchange Data, (ii) is not an index or financial product, and (iii) cannot be readily reverse-engineered to recreate Exchange Data or used to create other data that is a reasonable facsimile or substitute for Exchange Data.

* * * * *

Financial Product Distribution Program:***BZX Top Derived Data White Label Service[Program]:[*]**

* * * * *

BZX Top Derived Data API Service:

<u>External Subscriber Fee***</u>	<u>1 – 5 External Subscribers</u>	<u>\$2,500 / month / External Subscriber</u>
	<u>6 – 20 External Subscribers</u>	<u>\$2,000 / month / External Subscriber</u>
	<u>21+ External Subscribers</u>	<u>\$1,500 / month / External Subscriber</u>
<u>Professional User Fee</u>		<u>\$4.00/month</u>
<u>Non-Professional User Fee</u>		<u>\$0/month</u>

* A Distributor that provides a White Label Service or API Service for Derived Data taken from BZX Top is liable for these fees instead of the fees normally applicable for the distribution of BZX Top. A Distributor that provides a White Label Service or API Service for BZX Top data that is not Derived Data or distributes Derived Data through a platform other than a White Label Service or API Service would be liable for the fees normally applicable for the distribution of BZX Top.

** The External Subscriber Fee is non-progressive and is based on the number of White Label Service Platforms (i.e., "External Subscribers") that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are White Label Service Platforms would be charged a monthly fee of \$1,500 (i.e., 6 External Subscribers x \$250 each).

*** The External Subscriber Fee is non-progressive and is based on the number of API Service Platforms (i.e., "External Subscribers") that receive Derived Data from the Distributor. For example, a Distributor providing Derived Data based on BZX Top to six External Subscribers that are API Service Platforms would be charged a monthly fee of \$12,000 (i.e., 6 External Subscribers x \$2,000 each).

* * * * *